United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7307

United States Court of Appeals

For the Second Circuit.

IN THE MATTER OF THE PETITION

OF

THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master Pursuant to Title 29 U.S.C., Section 186 (c) (5).

TRUSTEES OF THE JOINT PENSION FUND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C AND 15D, AFL-CIO, other than Trustee THOMAS NOLAN, representing Local Union 14, 14B, I.U.O.E.,

Appellants,

THOMAS J. NOLAN, as Trustee, Representing Local Unions 14, 14B, International Union of Operating Engineers, AFL-CIO,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

CORCORAN AND BRADY
Attorneys for Appellants
11 Park Place
New York, N. Y. 10007
(212) BA. 7-2242

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P. C.
Attorneys for Appellee
1461 Franklin Avenue
Garden City, N. Y. 11530
(516) CH 8-5757

UNITED STATES COURT OF APPEALS
FILED
SEP 28 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

IN THE MATTER

of

The Petition of the TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, for the Appointment of a Special Master Pursuant to Title 29, U.S.C., Section 186 (c) (5).

TRUSTEES OF THE JOINT PENSION FUND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C and 15D, AFL-CIO, other than Trustee Thomas Nolan, representing Local Union 14, 14B, I.U.O.E.,

Appellants,

THOMAS J. NOLAN, as Trustee, Representing Local Unions 14, 14B, International Union of Operating Engineers, AFL-CIO,

Appellee.

- -X

DOCKET ENTRIES.

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jul 3.74	Filed Petition.	
Aug 21.74	Filed affidavit of service of William A. Canavan on dates as indicated, etc.	
Aug 21.74	Filed Local Unions 14 & 14B Notice of Appearance.	
11-1-74	PRE-TRIAL CONFERENCE HELD BY Ward	
Nov 4.74	Filed Brief on behalf of petitioners trustees of the joint welfare fund & Joint Pension Fund of the International Union of operating Engineers,Local Unions 14,14B,15,15A,15C,15D,AFL-CIO.	
Dec 10.74	Filed Stip & Order that the time for Local Union 14 & 14B of the International Union of Operating Engineers,AFL-CIO & Thomas J. Nolan,etc. to serve & file motion papers in opposition to the Petition is extended to 12/16/74;& the time for petitioners to answer the said motion is extended to 12/30/74. So Ordered Ward J.	
Dec 18.74	Filed Attys for Local Unions 14 & 14B, AFL CIO & Thomas J. Nolan,etc. Notice of motion for order dismissing petition. ret. Sine Die.	DCOPD,P.C.
Dec 18.74	Filed Supporting memorandum of law of Local 14,14B, International Union of operating Enginmers & Thomas J. Nolan as a Trustee of the Fund.	
Jan 14.75	Filed Stip & Order that the time for Petitioners,the Trustees of the Joint Welfare Fund & the Joint Pension Fund of the International Union of Operating Engineers,Local Unions 14,14 B, 15, 15C & 15D, AFL CIO to answer to motion to dismiss is extended to 1/15/75. So Ordered Ward J.	
Jan 15.75	Filed Affidavit in opposition to motion of local 14 to dismiss petition by Thomas A. Maguire.	
Jan 15.75	Filed Memorandum of Law in support of the position of Local 15 to Dismiss the motion of Local 14 which claims that this court has no jurisdiction.	
Jan 16.75	Filed Affidavit in opposition to motion of Local 14 to dismiss petition, by George E. Rooke.	
Jan 30.75	Filed Reply Memorandum of Law of Local 14,14B,International Union of Operating Engineers & Thomas J. Nolan As A Trustee of the Fund.	
Jan 30.75	Filed Affidavit of Thomas J. Nolan in reply to Trustee' Maguire's affidavit opposing Local 14's motion to dismiss.	
Feb 21.75	Filed Reply Affidavit of Thomas A. Maguire to Affidavit of Thomas J. Nolan.	
Feb 21.75	Filed Reply Memorandum of Law of the Trustees of the Joint Welfare & Pension Funds, Internat'l Union of Operating Engineers, Excluding Thomas J. Nolan as Union Trustee representing Local Unions 14 & 14B.	
Mar 6.75	Filed Memo. End. on motion dtd. 7/3/74. Petition granted in accordance with memorandum decision filed herewith. Ward J. (mailed notice)	
Mar 6.75	Filed Memo. End. on motion dtd. 12/18/74. Motion denied in accordance with memorandum decision field herewith. Ward J. (mailed notice)	
Mar 6.75	Filed Memorandum Order. The motion to dismiss the petition made on behalf of the Trustee representative of Local 14 is denied; & the petition to appoint a Special Master under rule 53(b) is granted. Settle order on ten days notice to all counsel & to the PEGC. Ward J. (mailed notice)	
Mar 7.75	Filed affidavit in opposition to motion of Local 14 to dismiss petition, by Alfred Gerosa.	
05-21-75	Filed affidavit of service by Maryann Rogala on 3-27-75.	
05-21-75	Filed Order appointing William J. Moore, 140 West 62nd Street, N.Y.C, 10023, as Special Master to preside over the hearings relating to the dissolution of the Joint Pension & Welfare Funds.....Ward,J. (mailed notice)	
06-10-75	Filed notice of entry of order, filed 5-21-75.	
10-09-75	Filed Affidavit in support of notice of motion by Edward O. Adler	
10-14-75	Filed Affidavit in support of notice of motion by Peter D. Stergios.	
12-4-75	Filed Affdvt of Wm J. Moore, Special Master, to clarify certain points raised in the affdvt of R. L. O'Hara, submitted on 10-31-75. (Judge)	

DOCKET ENTRIES

5-26-76	Fld Special Master's Recommendation.
5-26-76	Fld Memo on bk of S.M. Report....The Court adopts the S,M, Recommendation dtd 5-21-76....The Special Master is directed to continue the process of determining an equitable allocation of the Joint Fund following the procedures contained in Sec lo of the Joint Pension Plan...It is so Ordered....Ward,J. mn
6-25-76	Fld Trustees, Joint Pension Funds et al's Notice of Appeal to USCA from order dtd 5-25-76....cc to Wm L. Moore, S.M; Pension Benefit Guarantee Corp; Doran, Colerman)Hara, Pollio & Dunne; Shea, Gould, Climko & Kramer; Cunningham & Keating; R. D. Brady on 6-23-76.

PETITION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

IN THE MATTER OF THE PETITION :
OF THE TRUSTEES OF THE JOINT
WELFARE FUND OF THE INTERNATIONAL :
UNION OF OPERATING ENGINEERS,
LOCAL UNIONS 14, 14B, 15, 15A, :
15C, 15D, AFL-CIO AND THE
TRUSTEES OF THE JOINT PENSION FUND :
OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL UNIONS :
14, 14B, 15, 15A, 15C, 15D, AFL-CIO
FOR THE APPOINTMENT OF A SPECIAL :
MASTER PURSUANT TO Title 29 U.S.C.,
SECTION 186 (c) (5) :

----------X

Petition

Judge Ward
74 Civ. 2557
July 3, 1974

JURISDICTION OF THIS COURT IS BASED

ON TITLE 29 U.S.C., SECTION 186 (c)

(TAFT-HARTLEY LAW, SECTION 302 (c))

PETITION

The Petitioners hereinafter described, move this Court for an Order referring this cause to a Master and allege upon information and belief, as follows:

1. The Petitioners herein are (a) duly appointed Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO; and (b) duly appointed Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, and have a place for the transaction of their business at 265 West 14th Street, Borough of Manhattan, City, County and State of New York, and within the jurisdiction of this Court; and who respectively are THOMAS NOLAN, Union Trustee and Business Manager, representing Local Union 14, 14B, International Union of Operating Engineers, AFL-CIO, located at 141-57 Northern Boulevard, Flushing, New York 11354, and THOMAS A. MAGUIRE, Union Trustee and Business Manager of Local 15, 15A, 15C, 15D, International Union of Operating Engineers, AFL-CIO, located at 265 West 14th Street, New York, N. Y. 10011,

(who, with their successors and substitutes, are hereinafter referred to as the "Union Trustees"); and Charles W. Grant and James Martin (who, with their successors and substitutes, are hereinafter referred to as the "Employer Trustees") and all of the said Union Trustees and Employer Trustees (hereinafter collectively referred to as the "Trustees").

3. The Joint-Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, was duly organized under an Agreement and Declaration of Trust dated as of January 1, 1956 between the General Contractors Association of Greater New York and Adjacent Cities and certain component members of The Building Trades Employers Association, together with such other employers who may now or hereafter become parties to the within Pension Plan (hereinafter referred to as "Contributing Employers"); and Local Unions 14, 14B, 15, 15A, 15C, 15D, International Union of Operating Engineers (hereinafter referred to as the "Union"); and Joseph J.

Delaney and James R. Dillon (who with their successors and substitutes, are hereinafter referred to as the "Union Trustees"); and Harold E. McCormack and James B. Martin (who, with their successors and substitutes, are hereinafter referred to as the "Employer Trustees"); and all of the said Union Trustees and Employer Trustees (hereinafter collectively referred to as the "Trustees");

4. That the Joint Welfare Fund Plan and Trust Agreement and the Joint Pension Fund Plan and Trust Agreement respectively, were each submitted to the Internal Revenue Service, Manhattan District, and each was reviewed and received a determination as a tax exempt organization; that said Joint Welfare Fund and Joint Pension Fund were and are duly registered with the New York State Insurance Department in accordance with the requirements of the New York State Insurance Law and said Funds are each registered with the United States Department of Labor, Washington, D. C. under the Welfare and Pension Plans Disclosure Act of 1958, and the annual reports are duly made to the said New York State Insurance Department and United States Department of Labor, Washington, D. C.

PETITION

5. The participants of the said Joint Welfare Fund and Joint Pension Fund respectively are members of Local Unions known as Local Union 14, 14B and Local Union 15,15A, 15C,15D, AFL-CIO, International Union of Operating Engineers and those persons who are not members of said Unions but work under the jurisdiction thereof.

6. That the said Joint Welfare Fund and Joint Pension Fund respectively are jointly administered Funds by Employers and Unions in accordance with the provisions of the Taft-Hartley Law, Section 302(c), Title 29 U.S.C., Section 186, (c)(5).

7. Under the terms of the Collective Bargaining Agreements entered into between the Unions aforesaid and the employer associations or individual independent employers who execute such Collective Bargaining Agreements with the Unions aforesaid, the employers are required to pay into the Funds respectively, as amended, the sum of 5% on the wages of each employee or participant employed by a signatory employer to the Collective Bargaining Agreement. These wages include substantially all compensation received by the employee

including overtime wages. Contributions on the basis of 5% of said wages are remitted to the Fund by the Employer on a straight time basis.

8. Local Unions 14 and 14B and Local Unions 15, 15A, 15C, 15D are sister Local Unions affiliated with the International Union of Operating Engineers, Washington, D. C. and which parent organization issued charters under which the said respective sister Local Unions operate within the jurisdiction awarded to them.

9. That the said Declarations of Trust establishing the Joint Welfare Fund and the Joint Pension Fund have remained substantially the same since their inception except for certain amendments permitted under the Trust Agreements that the petitioners and their predecessors voted to make as improvements in the administration, operation and benefits of said Funds; that for the period of almost 25 years that the Joint Welfare Fund has been in existence and the 18 years that the Joint Pension Fund has been in existence the Petitioners can report to this Honorable Court, that the Trustees thereof have administered these Funds in a cooperative, prudent manner for the ultimate

benefit and good of the participants; that the Petitioners constituting the Board of Trustees and their predecessors have regularly and dutifully filed the required reports with the Internal Revenue Service, the New York State Insurance Department, Welfare Fund Bureau, and the United States Department of Labor; that upon information and belief, little or no criticism has ever been made by the State and Federal Agencies supervising these Funds and that the Board of Trustees has at all times followed the recommendations of the New York State Insurance Department Welfare Fund Bureau whenever such suggestions or recommendations were made for the benefit and improvement of the Funds and their administrations.

10. That upon information and belief, the Joint Welfare Fund and the Joint Pension Fund are each in sound financial condition and are not indebted to any creditor of any type or nature.

11. The membership of Local Union 14, 14B are for the most part Operating Engineers licensed by the City of New York or the State of New York, or both and operate

heavy construction equipment such as cranes, power shovels compressors and the like, and upon information and belief said Local Union has a membership of approximately 1,150 covered by the Funds.

12. The membership of Local Unions 15, 15A, 15C, 15D, are for the most part Operating Engineers licensed by the City of New York or the State of New York, or both and operate front end loaders, bull dozers, hydraulic cranes and render maintenance service for the same and include Operating Engineers employed in shops as well as Field Engineers who are known as surveyors, and upon information and belief the number constituting the membership of Local Unions 15, 15A, 15C, 15D covered by the Funds is approximately 5,200 members.

13. The membership of Local Unions 14, 14B and the membership of Locals 15, 15A, 15C, 15D are greater than the figures set forth above; however, the differences represent Pensioners already retired and persons not employed by contributing employers such as the City of New York

14. That of recent date, claim has been made on behalf of Members of Local 14 and 14B that they are

entitled to greater Pension Benefits than members of Local Union 15, 15A, 15C, 15D; this claim of differential is allegedl based upon the assertion that Members of Local 14 and 14B in some instances receive a higher rate of pay under the Collective Bargaining Agreement of said Union than the Members of Local Unions 15, 15A, 15C, 15D, receive under the Collective Bargaining Agreement of said Union; and that by reason of the fact that contributions are related to such wages as set forth on Page 5, Paragraph 7, proportionately larger contributions are being paid into theFund on their behalf.

15. On the other hand, the membership of Local 15 assert that in many instances their rate of compensation equals that of the members of Local 14 and 14B and that further, by reason of the greater number of employees embraced in its membership, results in a substantially larger gross contribution into the respective Funds on the basis that the ratio of membership between Local 15 and Local 14 is greater than 4 to 1.

16. Under date of May 31st 1974, Mr. Thomas Nolan, Business Manager of Local 14 and Union Trustee, by letter,

PETITION

informed Mr. Thomas A. Maguire, Business Manager of Local 15 and Union Trustee, that the Trustees have failed or refused to adopt certain recommendations to remedy problems affecting the membership of his Local Union and that he would take all legal means at his disposal to effect a satisfactory solution including the possibility of a division of the Funds into separate Funds for each Local Union; under date of June 3, 1974 Union Trustee Thomas A. Maguire replied to this letter by stating that upon the basis of a survey conducted of the Joint Pension Fund by an independent actuary engaged by Local Union 15, that said Local Union 15 would raise no objection if said Thomas Nolan, Business Manager and Union Trustee representing Local 14 chose to effect a division of the two Funds; that at a regular meeting of the Board of Trustees, including Employer and Union Trustees, a resolution was unanimously adopted to take such legal action as may be warranted in the premises to effect a division or separation of the Joint Welfare and the Joint Pension Funds into separate Welfare and Pension Funds representing the

membership and persons working under the jurisdiction of Local Unions 14 and 15 respectively and the Attorneys for the Joint Funds, CORCORAN AND BRADY, ESQS. were instructed to proceed in the Federal Court for the appointment of a Master to oversee and supervise the proceedings necessary to carry out the resolution of the Board of Trustees aforesaid, in accordance with the appropriate provisions of the Federal Law affecting such proceedings and in accordance with the provisions of the Trust Agreements establishing said Funds.

17. To assist theCourt and the Master appointed under said Petition in the knowledge of these Funds and their provisions, copies of the original Trust Agreements and Amendments thereto are attached hereto and marked as follows:

(a) Exhibit "A" Welfare Fund Trust Agreement, dated July 1, 1950;

(b) Exhibit "B" Pension Fund Trust Agreement, dated July 1, 1956;

(c) Exhibit "C" Welfare Fund Trust Agreement Amendments;

(d) Exhibit "D" Pension Fund Trust Agreement Amendments;

(e) Exhibit "E" Annual Report of the Joint Pension Fund to the New York State Insurance Department for the year ending December 31, 1973;

(f) Exhibit "F" Annual Report of the Joint Welfare Fund to the New York State Insurance Department for the year ending December 31, 1974.

18. That as of the year ending December 31, 1973 the net worth of the Joint Pension Fund of the International Union of Operating Engineers, Locals 14, 14B, 15, 15A, 15C, 15D, as the same was reported to the New York State Insurance Department was in excess of $30,000,000.00 and the net worth of the Joint Welfare Fund, International Union of Operating Engineers, Locals 14, 14B, 15, 15A, 15C, 15D, as reported for the same period aforesaid, namely December 31, 1973 to the New York State Insurance Department, was in excess of $6,000,000.00.

19. Actuarial firms were retained by Local Unions 14 and 15 respectively to audit and make reports and recommendations to the Board of Trustees of the two Funds and by reason of said reports, the Trustees at a regular Meeting held on June 11, 1974 voted unanimously to petition this Court for a division and separation of the

two Funds as an impasse had been reached as to the equities to which each of the respective Unions and their participants and members were entitled to.

20. It is ironic but true, that New York City is the only City of the United States under the jurisdiction of the International Union of Operating Engineers that has two separate autonomous hoisting and portable Local Unions, namely Locals 14 and 15; that the Members of said Local Unions 14 and 15, in many instances, under their Collective Bargaining Agreements and charters operate jointly as a crew on cranes and other heavy construction equipment and upon information and belief, the separation and division of the several Funds aforesaid will in no way change this arrangement or posture for jointly operated equipment in accordance with the Collective Bargaining Agreements and charters granted to the said Unions respectively.

21. The Trustees, as well as the Employer Associations constituting the Employer groups are desirous of fairly and properly separating the Joint Welfare Fund

and the Joint Pension Fund into separate Welfare and Pension Funds administered under the Taft Hartley Law by each Union aforesaid, as distinct entities rather than as joint ventures.

22. Upon information and belief and upon the advice of actuaries and Counsel, the Trustees or some of them have been informed that if the multi-level Pension Plan demanded by the Administration of Local Unions 14 and 14B is instituted, Members of Locals 14 and Local 15 or some of them will be disenfranchised by reason of the fact that their annual earnings will not meet the minimum eligibility requirement of $18,000 per year as suggested by the Trustee representing Local Unions 14 and 14B; to prevent such a disenfranchisement the Trustees have unanimously voted to petition this Court for the appointment of a Master to supervise the division and separation of the Funds aforesaid into four separate Trust Funds to be designated as follows:

(a) The Welfare Fund of the International Union of Operating Engineers, Local Unions 14 and 14B, AFL-CIO;

(b) The Welfare Fund of the International Union of Operating Engineers, Local Unions 15, 15A, 15C, 15D, AFL-CIO;

(c) The Pension Fund of the International Union of Operating Engineers, Local Unions 14 and 14B, AFL-CIO;

(d) The Pension Fund of the International Union of Operating Engineers, Local Unions 15, 15A, 15C, 15D, AFL-CIO

and to award to the Welfare and Pension Funds of Local Unions 14 and 15, respectively, such portion of the corporate trust as they may be mathematically and actuarially entitled to.

23. Reference to a Master under Rule 53(b) is warranted by reason of the exceptional conditions obtaining. These conditions are matters of account and difficultyof computation considering that there are about 7,000 Members in addition to spouses and children of the same whose rights and equities will have to be mathematically and actuarially determined. The financial size of the respective Funds and the rules of eligibility and other requirements of the respective Welfare and Pension Fund Plans would represent a burdensome and time consuming assignment for this Court to undertake, absent the referral of the matter to a Special Master.

PETITION

WHEREFORE, the Petitioner Trustees as well as the respective Unions and Employer Associations constituting the contracting parties who established these Funds, respectfully petition this Court for the appointment of a Special Master under Rule 53 (b) and for such other and further relief as may be just and equitable in the premises.

Dated: New York, New York
June 27, 1974

CORCORAN AND BRADY
Attorneys for the Trustees of
the Joint Welfare Fund and
the Joint Pension Fund of the
International Union of
Operating Engineers, Local
Unions 14, 14B, 15, 15A, 15C,
15D, AFL-CIO

Office and P.O. Address
11 Park Place
New York, New York 10007
Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

TO:

THOMAS A. MAGUIRE, Union Trustee
and Business Manager
Local 15, 15A, 15C, 15D, International
Union of Operating Engineers, AFL-CIO
265 West 14th Street
New York, N. Y. 10011

PETITION

THOMAS NOLAN, Union Trustee
and Business Manager
Local Unions 14, 14B, International Union
of Operating Engineers, AFL-CIO
141-57 Northern Boulevard
Flushing, New York 11354

E.
GEORGE/ROBKE, Employer Trustee
General Contractors Association
60 East 42nd Street
New York, N. Y. 10017

ALFRED GEROSA, Employer Trustee and
Representative of Employer Association
affiliated with the
Building Trades Employers Association
711 Third Avenue
New York, New York

INTERNAL REVENUE SERVICE
120 Church Street
New York, New York

UNITED STATES DEPARTMENT OF LABOR
Welfare and Pension Reports
1515 Broadway
New York, New York

MR. JAMES J. HIGGINS, Chief of
Examination Bureau
New York State Insurance Department
2 World Trade Center
New York, N. Y.

WILLIAM C. FINNERAN, JR.
General Manager of the
General Contractors Association
60 East 42nd St., New York, N.Y. 10017

EXHIBIT A, ANNEXED TO PETITION.

AGREEMENT AND DECLARATION OF TRUST AND BY-LAWS

JOINT WELFARE FUND

LEVY, GALOTTA & CORCORAN
COUNSELLORS AT LAW
11 PARK PLACE
NEW YORK CITY

EXHIBIT A, ANNEXED TO PETITION

AGREEMENT AND DECLARATION OF TRUST dated as of July 1, 1950, between the GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES AND THE BUILDING TRADES EMPLOYERS ASSOCIATION, together with such other employers who may now or hereafter become parties to the within Plan (hereinafter referred to as "Contributing Employers"); and Local Unions 14, 14B, 15, 15A and 15C, International Union of Operating Engineers, (hereinafter referred to as the "Union"); and Joseph J. Delaney of 111 Eighth Avenue, New York City, and James Dillon of 336 East 15th Street, New York City, (who, with their successors and substitutes, are hereinafter referred to as the "Union Trustees"); and Charles W. Grant of 100 East 42nd Street, New York City and James Martin of 341 Madison Avenue, New York City, (who, with their successors and substitutes, are hereinafter referred to as the "Employer Trustees"); and all of the said Union Trustees and Employer Trustees (hereinafter collectively referred to as the "Trustees");

WITNESSETH:

WHEREAS: Local Unions 14,14B, 15, 15A and 15C,International Union of Operating Engineers herein referred to as the "Union", has executed collective bargaining agreements with the GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES AND THE BUILDING TRADES EMPLOYERS ASSOCIATION, herein referred to as the "Associations", and with the individual contractors who employ members of the aforementioned unions, and who are not members of said Associations (the members of the Associations and the individual contractors being called "Employers" herein, it being understood that the term "Employers" shall also include all individual employers of members with which the Union shall hereafter enter into collective bargaining agreements;

EXHIBIT A, ANNEXED TO PETITION

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained and in further consideration of One Dollar and other good and valuable considerations to each party by the other in hand paid, the receipt whereof is hereby acknowledged, it is agreed as follows:-

FIRST: There is hereby created a welfare fund to be administered by a Board of Trustees, who shall consist of four (4) persons, two (2) of whom shall be appointed by the Contributing Employers, and shall serve at their pleasure; and the other two (2) shall be appointed by the Presidents of the respective unions hereinbefore named and shall serve at their pleasure.

SECOND: Each of the parties hereto having authority to appoint trustees to the welfare fund, as provided for in paragraph "FIRST" of this agreement, shall have the right at all times, with or without cause, to remove and replace any Trustee or Trustees so designated by or for them, respectively, and to fill any vacancy or vacancies caused by death or resignation of any Trustee or Trustees so designated by or for them, respectively. If because of any vacancy or vacancies in the Board of Trustees the number of them shall be less than four (4), then the fund shall not for that reason be inoperative, but the vacancy or vacancies shall be filled as herein provided.

BEST COPY AVAILABLE

EXHIBIT A, ANNEXED TO PETITION

THIRD: A quorum shall consist of at least three Trustees present or voting, as hereinafter provided. All decisions of the Trustees shall be by majority vote of the quorum, which voting shall be on a unit basis of the respective Employer and Employee Trustees and when a deadlock shall exist as to a proposal, nomination, motion or resolution, or whenever a quorum is lacking and at least two Trustees from either group shall notify the remaining Trustees in writing, in either of the foregoing cases, that there is a deadlock, either by reason of lack of qualified Trustees or failure to agree on the item set forth hereinabove, and it shall appear that the deadlock cannot be broken, the respective group of Trustees shall meet immediately to agree upon an umpire to decide the matters in question. Should the parties be unable to agree upon an impartial umpire, then on petition of any Trustee, the District Court of the United States for the Southern District of New York shall be empowered to make such appointment and the decision or award of such umpire shall be final and binding upon the parties. The Trustees may cast their vote either in person, at a meeting or by written instrument signed by them or by telegram sent by them for the requisite number of Trustees and after three days' written notice, to all the Trustees of the matter to be decided. The Chairman and Secretary Treasurer, or

EXHIBIT A, ANNEXED TO PETITION

any Trustee may at any time call a meeting of the Trustees at the office of the Welfare Fund by giving at least three days' written notice in advance of the time set for such meeting, except that any meeting so called, may be adjourned for a reasonable period of time, not exceeding five days, upon the request of any Trustee, provided good and sufficient reason shall be shown therefor. The meetings of the Trustees may be held at any time without notice, if all of the Trustees consent. If all of the Trustees shall agree in writing on any proposition, no notice of a meeting or of the matters to be determined need be given.

FOURTH: Each present and future member of the Union, as well as each present and future Employee of the Contributing Employer who is not a member of the Union, but who is covered under the terms and provisions of the Trust Agreement or who come under the Collective Bargaining Agreement between the Union and the Contributing Employers, shall be eligible for the benefits as hereinafter described.

Such Employees shall hereinafter be referred to as "Member Employees."

FIFTH: The Contributing Employer shall make continuing contributions to the Trustees for such social insurance benefits hereinafter set forth in an amount equal

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to three (3%) per cent of the total gross wages paid to the Member Employees for the week immediately preceding the first day of each week that this Agreement is to be in effect. Said contribution shall be made weekly and the statement with the check for the total amount due covering the aggregate of the Employees of the Contributing Employer shall be received in the Welfare Office not later than three days after the payroll period ends. Statements shall be on such form or forms as shall be prescribed by the Trustees. All such payments aforesaid are to commence for all wages paid to Employees on and after July 1, 1950.

SIXTH: The Contributing Employer shall, with each weekly remittance, as provided for in Paragraph "FIFTH" hereof, submit a report setting forth; (a) The names of all Member Employees who have received wages during the said reporting period and their social security numbers; (b) the respective amounts of the total gross wages paid to each of such Member-Employees.

When at any time hereafter any Employer signs a new collective bargaining agreement hereunder with the Union as a condition of said Employer entering into said collective bargaining relationship with the Union, he shall agree to be subject to all the terms and conditions of the within agreement from the time of the signing of the said collective bargaining agreement.

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SEVENTH: The Trustees declare that they will receive and hold the payments made by the Contributing Employers and other money or property which may come into their hands as Trustees hereunder (all which Contributing Employers' payments, money and property being called the "Trust Estate") for the following uses, purposes and trusts, and none other to wit:

A. The Trustees shall obtain a Group or Blanket Policy of insurance from an insurance company or companies duly licensed and authorized to do business in the State of New York covering the Member-Employees and containing such benefits as they may deem proper and sufficient to provide for the Member-Employees' term life insurance and accident and health benefits and other related benefits which the Trustees may see fit to grant Member-Employees. The Trustees, in their sole discretion, if they shall deem it advisable, may provide for the dependents of the Member-Employees, hospitalization and/or surgical benefits, or both.

Such policies of Group or Blanket insurance shall contain such limitations and conditions as the Trustees, in their discretion, may determine, and shall comply in all respects with the minimum requirements of the New York Disability Benefits Law.

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B. The Trustees shall have the power to demand, collect and receive employer contributions and may hold the same until applied to the ultimate purpose herein provided, and may take such steps, including the institution and prosecution of, or the intervention in, any proceeding at law, in Equity or in Bankruptcy as may be necessary or desirable to effectuate the collection of such employer contributions, including but not limiting the provisions for the collection of such employer contributions as is provided for under the New York State Disability Benefits Law.

C. The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may invest and reinvest such fund as they do not require for current expenditures in such securities as are legal for the investment of trust funds under the laws of the State of New York.

D. The Trustees shall:

(1) Pay or provide for the payment of all reasonable and necessary expenses of collecting the employers' contributions and administering the affairs of this trust, including but without limitation, the employment of such administrative, legal, expert and clerical assistance, the leasing of such premises and the purchase of or lease of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties; and

(2) Pay or provide for the payment of premium on such policies or Group insurance to be obtained by the Trustees, as provided for in subdivision "A" hereinabove.

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E. The Trustees shall establish and accumulate such reserve funds as the Trustees, in their discretion, deem necessary or desirable for the proper execution of the trusts herein created.

F. No Contributing Employer, or the Union, or a Member-Employee of the Union, or a Member-Employee of the Contributing Employer who is not a member of the Union, but who is covered under this Trust Agreement or the Collective Bargaining Agreement, or any person claiming, by, through or under any of them, shall have the right, title or interest in or to the "Trust Estate" or any part thereof, provided, however, that any Member-Employee who shall be actually covered by a policy of group insurance or who is beneficiary under said policy, shall be entitled to insurance benefits in the amount and subject to the terms and conditions of such policy. The Member-Employee, however, shall not have the right to assign the insurance benefits or any other benefits to which he may be entitled by reason of the Trust herein created. No Member-Employee shall have the right to receive any part of the Contributing Employers' contributions, instead of insurance benefits or to receive a cash consideration in lieu of such benefits, either under the terms of the Trust, or his withdrawal through severance of employment, or otherwise.

G. Any Trustee may resign by an instrument in writing executed for that purpose and delivered to the remaining Trustees.

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H. No vacancy or vacancies in the office of Trustee shall impair the power of the remaining Trustees acting in the manner hereinabove provided to administer the affairs of this Trust and should any vacancies not be filled in the manner herein elsewhere provided, the number of Trustees necessary to constitute a quorum shall be reduced by the number of such vacancies. If such vacancy be that of the Employer Trustee and not be filled as herein provided, then a Union Trustee shall resign and if the vacancy be that of a Union Trustee and shall not be filled as herein provided, then an Employer Trustee shall resign, it being the intention of the parties that the number of Union Trustees and Employer Trustees shall at all times be equal.

I. The cost and expenses of any suit or proceeding brought by or against the Trustees individually or in their capacity as Trustees, including counsel fees, shall be paid from the Trust Estate.

J. True and accurate books of account and records of all transactions shall be kept by the Trustees in care of the Secretary-Treasurer and which shall be audited by a Certified Public Accountant from time to time as the Trustees may determine, but at least annually. Copies of such audits shall be given to each of the Trustees, to the respective Unions and to the respective Associations, and shall be available at all times for

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inspection by interested and authorized persons during reasonable business hours at the office of the Welfare Fund, or such other place as the Trustees may designate.

K. All checks, drafts, vouchers or other withdrawal of funds from the account of the Trust Fund shall be drawn and issued in accordance with the By-Laws hereto annexed, but all withdrawals from the General Fund shall require the signature of the Chairman and Secretary-Treasurer, who shall be the Employer and Union Trustees respectively. The Trusteesshall in accordance with the By-Laws provide for a Special Account in the name of the Secretary-Treasurer of the Board of Trustees for payment of all routine and ordinary bills and expenses necessary to maintain current operations of the Trust Fund for which he shall be permitted to withdraw on his own signature and without any counter-signature, any funds necessary to pperate the normal needs and requirements of the Welfare Fund. However, the said Secretary-Treasurer, shall at least once a month report to the Trustees, all sums deposited in or withdrawn from such Special Account and the manner and reason for said disbursements.

L. (1) Each of the Trustees shall be protected from personal suit or liability in acting upon any paper or document believed by him to be genuine and to have been made, executed, or delivered by the proper party purporting to have made, executed

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or delivered the same, and shall be protected in relying and acting upon the opinion of legal counsel in connection with any matter pertaining to the administration of or execution of this trust.

(2) No Trustee shall be liable personally for any action taken or omitted by him in good faith, or for the acts of any agent, employee or attorney selected by the Trustee with reasonable care, or for any act or omission of any other Trustee.

(3) The Trustees shall have the power to require any Contributing Employer, and a Contributing Employer, when so required, shall furnish to the Trustees such information and reports as they may require in the performance of their duties under this agreement and declaration of trust. The Trustees or any authorized agent or representative of the Trustees shall have the right at all reasonable hours during business hours to enter upon the premises of the Employer and to examine and copy such of the books, records, papers and reports of said Employer as may be necessary to permit the Trustees to determine whether said Employers are making full payment to the Trustees of the amounts required under this Trust Agreement and the aforementioned Collective Bargaining Agreement.

(4) The Trustees may delegate any of their ministerial powers or duties hereunder to any of their agents or employees.

(5) The Trustees shall have the power to make rules and regulations not inconsistent with the terms hereof to carry out the provisions hereof.

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(6) The Trustees shall not receive any compensation for the performance of their duties, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties; Union Trustees who are working members shall be compensated for any time lost in attending meetings or performing their duties as Trustees and such payments shall be made from the Trust Fund. Costs and expenses of any suit or proceeding, brought by or against the Trustees individually or in their capacity as such Trustees, but arising from the administration of the Trust, including but not necessarily limited to Counsel Fees, shall be a direct change on and paid from the Trust Fund.

(7) Any successive Trustee appointed as hereinabove provided, shall upon acceptance in writing of the terms of the Trust be vested with all of the rights, powers and duties of his predecessor.

(8) The Trustees in the administration of the Trust Agreement shall also be subject to the terms and provisions of a set of By-Laws to be adopted by the Board of Trustees. The said By-Laws shall when adopted, be incorporated in the regular minutes of the affairs of the Trustees and be binding upon the Trustees and their successors and substitutes, and any additional Trustees who may be appointed and shall in the sense that they so provide, together with and consistent with the provisions of the within Trust Agreement, govern the administration of the Trust Agreement.

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M. (1) No party dealing with the Trustees in relation to this Trust shall be obliged to see to the application of any money or property of the Trust or to see that the terms of this Trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustees, and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon (a) that at the time of delivery of said instrument the Trust hereby created was in full force and effect, (b) that said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement, and (c) that the Trustees were duly authorized and empowered to execute such instruments.

(2) The receipt given by the Trustees for any monies or other properties received by them shall effectually discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application, or be answerable for the loss or for the misapplication thereof.

N. The provisions of this agreement may be amended to any extend and at any time, or by an instrument in writing executed by the Union and the Contributing Employers, provided that no amendment shall divert any of the Trust Estate then in the hands of the Trustees (and already paid in by the Contributing Employers to the Trustees) from purposes of this trust to provide social insurance herein provided for.

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O. This Trust is created and accepted in the State of New York and all questions pertaining to the validity or construction of this instrument and of the acts and transactions of parties hereto shall be determined in accordance with the laws of the State of New York.

P. The Trustees, in their collective capacity, shall be known as the Board of Trustees of the Joint Welfare Fund, International Union of Operating Engineers, Local Unions 1A, 1B, 1C, 15A, 15C, and may conduct the business of the Trust and execute all instruments in that name.

EIGHTH: In the event that any of the Contributing Employers hereunder shall default in remitting the monies required to be sent by them, pursuant to the terms and conditions hereinafter set forth upon demand by the Board of Trustees or shall refuse to become parties signatory to this agreement upon demand made upon them by the Union, said default, or refusal on the part of any such Employer shall be considered a breach of the Collective Bargaining Agreement between such Employer and the Union, entitling the Union, at its election, to consider the Collective Bargaining Agreement with the said Employer breached in a major way, and it may, in addition to any rights it may have in declaring said Collective Bargaining Contract breached, nevertheless call upon the Trustees

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to bring such action against the Employer, in law or in equity, or the Union may bring such action in law or in equity to either compel the performance of this Agreement as well as the Collective Bargaining Agreement, or as well to require the Employer to make any and all payments due or to become due by him under the terms of the within Agreement.

The Trustees or the Union shall report immediately the delinquency of any Contributing Employer in the payment of moneys due under this Trust Agreement. The institution or prosecution of any such suit for the collection of moneys or other legal redress shall not be deemed a waiver or reinstatement of such Collective Bargaining Agreement so far as such delinquent Employer is concerned.

Any of the aforesaid Employees who shall have been employed with such delinquent Employer, shall despite such delinquency be entitled nevertheless to receive benefits of the Welfare Fund and the deficiency arising from such delinquency shall be made up by drawing upon the reserve funds held by the Trustees, so that at no time shall any of the said Employees be disentitled to any benefits hereunder merely by virtue of the delinquency of his Employer in making the contributions required hereunder.

NINTH: The Trust to be set up by the parties herein shall be known as The Joint Welfare Fund, International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C: and the

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Trustees may conduct the business of the Trust and execute all instruments in that name. The Chairman of the Board of Trustees shall be selected from the Employer-Trustees of the Board and the Secretary-Treasurer shall be selected from the Union Trustees of the Board.

TENTH: There are now or may hereafter be in effect other Welfare Plans, similar in form and substance to the one hereunder, between the Unions and other Associations of Employers and it is now or may hereafter be provided in such Welfare Plans that the same, upon demand of the Unions, may be integrated with the present Plan hereunder, upon the Trustees of such other plans resigning and turning over to the Trustees hereunder all their funds, records and documents in good order pertaining to the said respective Welfare Plans, and it is the spirit of this Agreement that, in such event or events, all of the funds of such Welfare Plan or Plans shall be merged with and integrated with the Plan hereunder, so that all of the Employees, members of the affiliated Unions, which were covered under such other Plans, shall be and become immediately covered under the scope of this Agreement, and the Employers who are members of such Associations having such Welfare Plans, other than the one hereunder, shall immediately be and become bound by the terms of the within Agreement upon their executing

EXHIBIT A, ANNEXED TO PETITION

a written consent to and assumption of the terms and conditions of the within Agreement and they shall hereafter be bound by the terms and conditions hereof as though they had originally been included as parties to this Agreement; and, in such event, the said other Welfare Plan shall be discontinued and merged in this Plan which shall thereafter become the effective Plan for all operating engineers. All of the foregoing, however, shall be at the election of the said Unions and shall be at their sole irreviewable discretion.

ELEVENTH: If for any reason any provision of this Agreement shall be, is or is hereafter determined by decision, act or regulation of a duly constituted body or authority, to be in any respect invalid, it shall not nullify any of the other terms or provisions of this Agreement and in such respect or respects as it may be necessary to conform this Agreement, with the applicable provision of law in order to prevent the invalidity of such provision or provisions, then the said provision or provisions shall be deemed automatically amended to conform with such law, rule, regulation, act or decision and the Unions and the Associations, parties to this Agreement, shall in such case, meet and take the necessary and appropriate action at a duly constituted meeting, to formally adopt and ratify such amendment or amendments to this agreement and they shall be deemed included herein as though originally contained in and a part of this Agreement from its inception.

EXHIBIT A, ANNEXED TO PETITION

AMENDMENTS

TWELFTH: The provisions of this Agreement may be amended at any time by an instrument in writing executed by the Trustees and consented to and approved by the Union and the Associations, provided that no amendment shall (1) divert, or provide for the use of the Trust Estate then in the hands of the Trustees from the purposes of this Trust, to provide group insurance in the event of death, illness or accident to the members of the Union or to their beneficiaries as hereinabove provided; or (2) eliminate or modify the provisions of paragraph "SEVENTH F."

FIDELITY BONDS

THIRTEENTH: The Trustees shall, by Resolution duly adopted, provide for such Fidelity Bonds for the Trustees, and employees of the Welfare Fund, who shall be authorized to withdraw funds from the Trust Estate with such Companies and in such amounts as they may determine.

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TERMINATION

FOURTEENTH: In the event that the obligation of the Employers to make Employer contributions shall terminate or upon the liquidation of the Trust Estate the Trustees shall apply the Trust Estate (a) to the purposes specified in paragraph "SEVENTH A."; (b) to the purposes specified in paragraph "SEVENTH B."; and (c) any balance which cannot be so applied, to such other purposes as in the opinion of the Trustees will best effectuate the purposes hereof, and upon the disbursements of the entire Trust Estate, this Trust shall terminate.

FIFTEENTH: The Board of Trustees shall select a Vice Chairman of the Board of Trustees who shall be selected from the Members of said Board and who shall preside over the meetings of the Board of Trustees in the absence of the Chairman.

EXHIBIT A, ANNEXED TO PETITION

IN WITNESS WHEREOF, the Trustees, the Associations and Locals 14, 14B, 15, 15A, 15C of the International Union of Operating Engineers have executed this Instrument to evidence their acceptance of the Trusts hereby created and their agreement to be bound hereby, the day and year first above written.

TRUSTEES

_____ (L.S.)

_____ (L.S.)

_____ (L.S.)

_____ (L.S.)

GENERAL CONTRACTORS ASSOCIATION

_____ (L.S.)

_____ (L.S.)

BUILDING TRADES EMPLOYERS ASSOCIATION

_____ (L.S.)

_____ (L.S.)

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 14, 14B

_____ (L.S.)

_____ (L.S.)

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 15, 15A, 15C

_____ (L.S.)

_____ (L.S.)

EXHIBIT B, ANNEXED TO PETITION.

Agreement and Declaration of Trust

JOINT PENSION FUND

of the

INTERNATIONAL UNION OF OPERATING ENGINEERS,

LOCAL UNIONS 14, 14B, 15, 15A, 15C · A.F.L.-C.I.O.

EXHIBIT B, ANNEXED TO PETITION

JOINT PENSION FUND

of the

INTERNATIONAL UNION OF OPERATING ENGINEERS,

LOCAL UNIONS 14, 14B, 15, 15A, 15C - A.F.L.-C.I.O.

111 Eighth Avenue, New York 11, N. Y.
Room 1563

Telephone ALgonquin 5-7657

JAMES B. MARTIN
HAROLD E. MCCORMACK
Employer Trustees

JOSEPH J. DELANEY
JAMES R. DILLON
Union Trustees

Legal Counsel for the Fund:
LEVY, GALOTTA AND CORCORAN

Pension Consultants:
HAROLD FAGGEN ASSOCIATES

Certified Public Accountants:
KLEIN, KATCHER AND COMPANY

EXHIBIT B, ANNEXED TO PETITION

AGREEMENT AND DECLARATION OF TRUST dated as of January 1, 1956, between the GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES and certain component members of THE BUILDING TRADES EMPLOYERS ASSOCIATION, including BUILDING CONTRACTORS AND MASON BUILDERS ASSOCIATION, THE CEMENT LEAGUE, STONE SETTING CONTRACTORS ASSOCIATION, ALLIED BUILDING METAL INDUSTRIES, RIGGING CONTRACTORS ASSOCIATION, CONTRACTING PLASTERERS ASSOCATION and CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION, together with such other employers who may now or hereafter become parties to the within Plan (hereinafter referred to as "Contributing Employers"); and Local Unions 14, 14B, 15, 15A and 15C, International Union of Operating Engineers, (hereinafter referred to as the "Union"); and JOSEPH J. DELANEY of 111 Eighth Avenue, New York City, and JAMES R. DILLON of 336 East 15th Street, New York City, (who with their successors and substitutes, are hereinafter referred to as the "Union Trustees"); and HAROLD E. McCORMACK of 52 Vanderbilt Avenue, New York 17, New York and JAMES B. MARTIN of 341 Madison Avenue, New York City, (who, with their successors and substitutes, are hereinafter referred to as the "Employer Trustees"); and all of the said Union Trustees and Employer Trustees (hereinafter collectively referred to as the "Trustees");

WITNESSETH:

WHEREAS: Local Unions 14, 14B, 15, 15A and 15C, International Union of Operating Engineers herein referred to as the "Union", have executed collective bargaining agreements with the GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES and certain component members of THE BUILDING TRADES EMPLOYERS ASSOCIATION, including BUILDING CONTRACTORS AND MASON BUILDERS ASSOCIATION, THE CEMENT LEAGUE, STONE SETTING CONTRACTORS ASSOCIATION, ALLIED BUILDING METAL INDUSTRIES, RIGGING CONTRACTORS ASSOCIATION, CONTRACTING PLASTERERS ASSOCIATION and CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION, herein referred to as the "Associations", and with the individual contractors who employ members of the aforementioned unions, and, who are not members of said Associations (the members of the Association and the individual contractors being called "Employers" herein), it being understood that the term "Employers" shall include all individual employers of members with which the Union shall hereafter enter into collective bargaining agreements for the establishment of a joint pension fund;

EXHIBIT B, ANNEXED TO PETITION

WHEREAS: The said collective bargaining agreements among other things provide for the establishment of a pension and retirement fund, and for the payment by the Employers to the pension fund periodically of a sum of money equal to a stated percentage of the wages paid during the preceding weekly pay period or periods to those employees who are covered and entitled to the benefits of the said collective bargaining agreements, and

WHEREAS: The Union, the Associations and the Employers desire to establish a Trust under which the moneys paid on account of pension and retirement benefits will be held in a trust fund to be known as the JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, AFL-CIO (herein referred to as the "Joint Pension Fund"), and to designate trustees to receive, hold, administer and disburse said moneys and other properties owned by the Joint Pension Fund, and to define the powers, duties and responsibilities of the Trustees; and

WHEREAS: It is desired by the Union, the Associations and the Employers, that the Trustees shall formulate rules, regulations and by-laws comprising the qualifications, eligibility and benefit provisions of the Pension and Retirement Plan for the benefit of the Employees embraced within the coverage of this agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained and in further consideration of One Dollar and other good and valuable considerations to each party by the other in hand paid, the receipt whereof is hereby acknowledged, it is agreed as follows:—

ARTICLE I

Definitions

Section 1. The term "Employer" as used herein shall mean each employer who has presently in force, or who hereafter executes, a collective bargaining agreement with the Union providing for such Employer's contributions.

Section 2. The term "Employee" as used herein shall mean all those employees who are embraced within the scope of the collective agreements hereinabove referred to now or hereafter in effect between the Employers and the Union.

Section 3. The term "Joint Pension Fund" or "Joint Pension Trust" as used herein shall mean all contributions to the Trust Fund created hereunder received by the Trustees under the said

EXHIBIT B, ANNEXED TO PETITION

collective bargaining agreements and any additional contributions hereto that may hereafter be agreed upon by the parties under the said collective bargaining agreements, or other written collective bargaining agreement between the parties, or any modification, amendment, revision or extension thereof, together with all income, increments, earnings and profits therefrom, and all other funds (as herein defined) received by the Trustees for the uses, purposes and trusts set forth in this Trust Agreement. The term "Joint Pension Fund" shall be interchangeable with the term "Joint Pension Trust" and with the term "Joint Trust Fund".

Section 4. The term "Fund" or "Funds" as used herein shall mean (1) cash, (2) credits, (3) stocks either common (with or without voting powers) or preferred (with or without present or future voting rights in the event of the happening of a preference condition), (4) bonds, (5) notes, (6) other property or securities or interests in property (real, personal or mixed) whether or not such funds meet the requirements of legal investments for trust funds in any state or jurisdiction, and (7) any life insurance or annuity contract or contracts issued by a life insurance company, held in or forming a part of the Joint Pension Fund.

Section 5. The term "Trustees" as used herein shall mean the Trustees herein nominated and appointed and any successor Trustees designated in the manner provided herein.

Section 6. The term "Joint Pension Plan" as used herein means the plan, program, method and procedure for the making of regular contributions by Employers, and the payment by the Trustees of benefits from the Joint Pension Fund, in accordance with such rules and regulations relating to eligibility requirements, retirement age, amount and computation of benefits and the general administration and operation of the Joint Pension Fund as the Trustees may from time to time adopt and promulgate.

Section 7. The term "Contributions" as used herein shall mean the payments required to be made to the Joint Pension Fund by the Employers.

Section 8. Whenever the GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES and certain component members of THE BUILDING TRADES EMPLOYERS ASSOCIATION, including BUILDING CONTRACTORS AND MASON BUILDERS ASSOCIATION, THE CEMENT LEAGUE, STONE SETTING CONTRACTORS ASSOCIATION, ALLIED BUILDING METAL INDUSTRIES, RIGGING CONTRACTORS ASSOCIATION, CONTRACTING PLASTERERS ASSOCIATION and CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION are herein referred to they shall include and mean those employer members of such associations who employ workers

EXHIBIT B, ANNEXED TO PETITION

covered under collective agreements in effect with LOCAL UNIONS 14, 14B, 15, 15A, 15C, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO and in the bargaining unit of such collective agreements.

ARTICLE II

Name

There shall be established a Joint Trust Fund to be known as the JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, AFL-CIO.

ARTICLE III

Purposes

The purposes of the Joint Trust Fund shall be to provide, pursuant to the Joint Pension Plan, pension and retirement benefits, retirement disability benefits, and all other kindred benefits, for the Employees eligible thereto hereunder.

ARTICLE IV

Approval of Governmental Agencies

The Joint Pension Plan shall be submitted for approval under the applicable provisions of the Internal Revenue Code. In the event of failure of the Pension Plan and Agreement and Declaration of Trust to receive, or retain, approval as a qualified Joint Pension Plan and Agreement and Declaration of Trust under said provisions of the Internal Revenue Code, or any other applicable provisions of Federal Law as now in effect, or as subsequently amended or legislated, or if such approval, or any ruling in connection therewith shall result in the Employers' contribution constituting taxable income to Employees, or the Employers not being entitled to claim a deduction of such contributions for income tax purposes, the Trustees shall make such changes as are necessary to receive or retain such approval or authority for Employers to deduct payments to the Joint Pension Trust without reporting such payments as taxable income to Employees. It is intended, however, that in any event a Pension Plan shall be established and should any dispute arise among the Trustees because of the said approval or any ruling in connection therewith.or failure to secure such approval, then a deadlock shall be deemed to exist and an

EXHIBIT B, ANNEXED TO PETITION

umpire shall be designated as provided in Article V, Section 3, to decide such dispute, giving prime consideration to the intent set forth herein.

ARTICLE V

Creation of Benefit Fund

FIRST: There is hereby created a Joint Pension Fund to be administered by a Board of Trustees, who shall consist of four (4) persons, two (2) of whom shall be appointed by the Contributing Employers, and shall serve at their pleasure; and the other two (2) shall be appointed by the Presidents of the respective unions hereinbefore named and shall serve at their pleasure.

SECOND: Each of the parties hereto having authority to appoint trustees to the Joint Pension Fund, as provided for in paragraph "FIRST" of this agreement, shall have the right at all times, with or without cause, to remove and replace any Trustee or Trustees so designated by or for them, respectively, and to fill any vacancy or vacancies caused by death or resignation of any Trustee or Trustees so designated by or for them, respectively. If because of any vacancy or vacancies in the Board of Trustees the number of them shall be less than four (4), then the Fund shall not for that reason be inoperative, but the vacancy or vacancies shall be filled as herein provided.

THIRD: A quorum shall consist of at least three Trustees present or voting, as hereinafter provided. All decisions of the Trustees shall be by majority vote of the quorum, which voting shall be on a unit basis of the respective Employer and Employee Trustees and when a deadlock shall exist as to a proposal, nomination, motion or resolution, or whenever a quorum is lacking and at least two Trustees from either group shall notify the remaining Trustees in writing, in either of the foregoing cases, that there is a deadlock, either by reason of lack of qualified Trustees or failure to agree on the item set forth hereinabove, and it shall appear that the deadlock cannot be broken, the respective group of Trustees shall meet immediately to agree upon an umpire to decide the matters in question. Should the parties be unable to agree upon an impartial umpire, then on petition of any Trustee, the District Court of the United States for the Southern District of New York shall be empowered to make such appointment and the decision or award of such umpire shall be final and binding upon the parties. The Trustees may cast their vote either in person, at a meeting or by written instrument signed by them or by telegram sent by them for the requisite number of Trustees and after three days' written notice, to all the Trustees of the matter to be decided. The

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Chairman and Secretary-Treasurer, who shall be the Employer and Union Trustee respectively, or any Trustee may at any time call a meeting of the Trustees at the office of the Joint Pension Fund by giving at least three days' written notice in advance of the time set for such meeting, except that any meeting so called, may be adjourned for a reasonable period of time, not exceeding five days, upon the request of any Trustee, provided good and sufficient reason shall be shown therefor. The meetings of the Trustees may be held at any time without notice, if all of the Trustees consent. If all of the Trustees shall agree in writing on any proposition, no notice of a meeting or of the matters to be determined need be given.

FOURTH: Each present and future member of the Union, as well as each present and future Employee of the Contributing Employer who is not a member of the Union, but who is covered under the terms and provisions of the Trust Agreement or who come under the Collective Bargaining Agreement between the Union and the Contributing Employers, shall be eligible for the benefits as hereinafter described.

Such Employees shall hereinafter be referred to as "Member Employees."

FIFTH: The Contributing Employer shall make continuing contributions to the Trustees for such pension and retirement benefits and all other kindred benefits hereinafter set forth in an amount equal to three per cent (3%) of the total gross wages paid to the Member Employees or such other sums as may be provided for in subsequent collective bargaining agreements or amendments to existing bargaining agreements, for the week immediately preceding the first day of each week that this Agreement is to be in effect. Said contribution shall be made weekly and the statement with the check for the total amount due covering the aggregate of the Employees of the Contributing Employer shall be received in the Pension Office not later than three days after the payroll period ends. Statements shall be on such form or forms as shall be prescribed by the Trustees. All such payments aforesaid are to commence for all wages paid to Employees on and after January 1, 1956*, and shall continue until June 30, 1956 following which date the contribution shall be equal to four per cent (4%) of the total gross wages or such other sums paid to said member employee.

SIXTH: The Contributing Employer shall, with each weekly remittance, as provided for in Paragraph "Fifth" hereof, submit a report setting forth: (a) The names of all Member Employees who have received wages during the said reporting period and

* Except contributions from Employers of Construction Equipment Rental Association commence on April 9, 1956.

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their social security numbers; (b) the respective amounts of the total gross wages paid to each of such Member-Employees and the hours worked.

When at any time hereafter any Employer signs a new collective bargaining agreement hereunder with the Union as a condition of said Employer entering into said collective bargaining relationship with the Union, he shall agree to be subject to all the terms and conditions of the within agreement from the time of the signing of the said collective bargaining agreement.

ARTICLE VI

Powers and Duties of the Trustees, Expenses and Fees

FIRST: The Trustees declare that they will receive and hold the payments made by the Contributing Employers and other money or property which may come into their hands as Trustees hereunder (all which Contributing Employers' payments, money and property being called the "Trust Estate") for the following uses, purposes and trusts, and none other to wit:

(a) Accept and receive all contributions and shall hold, invest, reinvest, manage and administer the same as part of the Joint Pension Fund for the uses, purposes and trusts herein provided.

(b) Accumulate all income, earnings and profits of the Joint Pension Fund and receive and administer the same as a part thereof.

(c) Formulate, adopt and administer a Joint Pension Plan for the exclusive benefit of the Employees in order to provide pensions and retirement benefits for Employees.

(d) Promulgate and establish rules and regulations for the administration and operation of the Joint Pension Plan in order to effectuate the purposes thereof; and in pursuance thereto (but without limitation on the powers of the Trustees by reason of such enumeration), formulate and establish the conditions of eligibility with respect to age and length of service, qualifications for retirement including early retirement, conditions for vesting prior to normal retirement date, past and future service benefit credits, the method of providing pensions, the payment of premiums in the event that insurance policies or annuity contracts are part of the Joint Pension Plan, the purchase, handling, control and disposition of retirement income contracts, policies and annuities, the investment of funds and any and all other matters which the Trustees, in their discretion, may deem necessary or proper to effectuate the purposes and intent of the Joint Pension Program.

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(e) Amend the Joint Pension Plan from time to time, provided that such amendments comply with the purposes hereof. The Joint Pension Plan and all amendments thereto adopted by the Trustees shall be filed by the Trustees as part of the records and minutes of the Trustees, and a copy thereof shall be sent to the Union, the Associations and the Employers.

(f) Establish and accumulate as part of the Joint Pension Fund such reserve or reserves as the Trustees shall in their opinion deem necessary or advisable for the sound and efficient administration of the Joint Pension Plan.

(g) Purchase, acquire, receive, retain, administer, surrender or assign any life insurance or annuity contract and pay the premiums, and exercise the rights, privileges, options and benefits contained in any such contract, in the event that the Trustees determine that insurance policies or annuity contracts shall be acquired as part of the Joint Pension Program.

(h) Receive any securities or other property included within the Term "Funds" hereunder that are tendered to them and that they may deem to be acceptable.

(i) Pay out of the Trust Fund all real and personal property taxes of any nature whatsoever; provided, however, that the Trustees may contest the validity of any tax and may obtain the advice of counsel and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Trustees shall be held completely harmless.

(j) Enter into agreements, contracts and other instruments for the deposit of funds with banks, trust companies or other institutions, which accept and hold moneys on deposit, and to authorize such depositary to act as custodian of the funds, whether in cash or securities or other property, and to authorize such depositary or depositaries to convert, invest and reinvest the funds, entirely or in part, into securities of any kind and nature whatsoever.

(k) In their discretion appoint a bank or a trust company whose principal office is located in the City of New York, to be designated as the "Corporate Trustee", and to enter into and execute a trust agreement with such bank or trust company to provide for the investment and reinvestment of the Trust Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Trust Fund, and upon such execution to convey and transfer to the Corporate Trustee any part of the Joint Pension Fund, and without limit with respect to the powers which the Trustees may grant to the Corporate Trustee in such Agreement. The Trustees shall be forever released from any responsibility or liability with respect to any funds which they may convey to the "Corporate Trustee".

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(l) The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may invest and reinvest such fund as they do not require for current expenditures in such securities as are legal for the investment of trust and pension funds under the laws of the State of New York.

(m) The Trustees shall pay or provide for the payment of all reasonable and necessary expenses of collecting the employers' contributions and administering the affairs of this trust, including but without limitation, the employment of such administrative, legal, actuarial and accounting, expert assistance, the leasing of such premises and the purchase of or lease of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

(n) The Trustees shall pay or provide for the payment of premiums on such insurance policies or annuity contracts and group insurance to be obtained by the Trustees, as provided for hereinabove, in the event that the Trustees determine that insurance policies or annuity contracts and group insurance shall be acquired as part of the Pension Program.

(o) The Trustees shall establish and accumulate such reserve funds as the Trustees, in their discretion, deem necessary or desirable for the proper execution of the trusts herein created; hold from time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(p) Any Trustee may resign by an instrument in writing executed for that purpose and delivered to the remaining Trustees.

(q) No vacancy or vacancies in the office of Trustee shall impair the power of the remaining Trustees acting in the manner hereinabove provided to administer the affairs of this Trust and should any vacancies not be filled in the manner herein elsewhere provided, the number of Trustees necessary to constitute a quorum shall be reduced by the number of such vacancies. If such vacancy be that of the Employer Trustee and not be filled as herein provided, then a Union Trustee shall resign and if the vacancy be that of a Union Trustee and shall not be filled as herein provided, then an Employer Trustee shall resign, it being the intention of the parties that the number of Union Trustees and Employer Trustees shall at all times be equal.

(r) The cost and expenses of any suit or proceeding brought by or against the Trustees individually or in their capacity as Trustees, including counsel fees, shall be paid from the Trust Estate.

(s) The Trustees may delegate any of their ministerial powers or duties hereunder to any of their agents or employees.

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(t) The Trustees shall have the power to make rules and regulations not inconsistent with the terms hereof to carry out the provisions hereof.

SECOND: In addition to all other rights, powers and prerogatives vested in them, the Trustees may:

(a) Hold from time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(b) Sell, transfer or dispose of any securities or other property at any time held by them for cash or on credit; and convert, or exchange any securities or other property at any time held by them for other securities or property which the Trustees may deem acceptable. Any such sale, transfer, disposition, conversion or exchange may be made publicly or by private arrangement.

(c) Consent to the reorganization, consolidation, merger, dissolution, or readjustment of the finances of any corporation, company or association, any of the securities of which may at any time be held hereunder, exercise any option or options, make any agreement or subscription, pay any expenses, assessments or subscriptions in connection therewith and hold and retain any property acquired by means of the exercise of the powers expressed in this paragraph to the extent that it is acceptable to the Trustees.

(d) Compromise, arbitrate, settle, adjust or release any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund on such terms and conditions as the Trustees may deem advisable.

(e) Register any securities or other property held in the Pension Fund with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity; and hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of the Trustee shall show that all such investments are part of the Pension Fund.

(f) Lease or purchase such premises, materials, supplies and equipment, and employ and retain such legal counsel, investment counsel, administrative, accounting, actuarial, clerical, custodian and other assistants or employees as in their discretion the Trustees may deem necessary or appropriate and to pay their reasonable expenses and compensation out of the Trust Fund.

(g) Vote in person or by proxy or otherwise upon securities held by the Trustees and to exercise by attorney or in any other manner any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder.

(h) Make, execute and deliver as Trustees any and all instruments in writing necessary or proper for the effective exercise of any of the Trustees' powers as stated herein, or otherwise neces-

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sary to accomplish the purposes of the Pension Fund and this Trust Agreement.

(i) Borrow money from any and all types of persons, companies or institutions upon such terms and conditions as the Trustees may deem desirable and for the sums so borrowed or advanced, the Trustees may issue promissory notes or other evidence of indebtedness as Trustees, and secure the repayment thereof by the pledge of any securities or other property in their possession as Trustees.

(j) Apply to the United States District Court for the Southern District with respect to the disposition of any disputes which may arise among the Trustees and be unresolved between them or with respect to the disposition of the Pension Fund if there shall be a dispute and no resolution concerning the same; or submit by mutual agreement to impartial arbitration for an award and determination any of the foregoing disputes if they be unresolved; but nothing herein contained shall be construed as imposing any duty on the Trustees to make such application, or as a limitation of any kind or nature upon the powers, rights and prerogatives of the Trustees.

(k) Authorize by resolution any one or more of the Trustees to execute any notice or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Pension Trust and the Trustees.

(l) Provide, under this Agreement and Declaration of Trust and under any plan thereafter promulgated, for self-employed or employer union men or such employees or officials connected with and/or members of the Union for whom the Union will make contributions, subject at all times to the irreviewable discretion of the Trustees as to coverage, amount of contributions and any and all other things or matters pertaining thereto.

(m) Do all other acts, and take any and all other action, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

THIRD: The Trustees shall not receive any compensation for the performance of their duties, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties; Union Trustees who are working members shall be compensated for any time lost in attending meetings or performing their duties as Trustees and such payments shall be made from the Trust Fund. Costs and expenses of any suit or proceeding, brought by or against the Trustees individually or in their capacity as such Trustees, but arising from the administration of the Trust, including but not necessarily limited to Counsel Fees, shall be a direct charge on and paid from the Trust Fund.

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FOURTH: Any successive Trustee appointed as hereinabove provided, shall upon acceptance in writing of the terms of the Trust be vested with all of the rights, powers and duties of his predecessor.

FIFTH: The Trustees in the administration of the Trust Agreement shall also be subject to the terms and provisions of a set of By-Laws to be adopted by the Board of Trustees. The said By-Laws shall when adopted, be incorporated in the regular minutes of the affairs of the Trustees and be binding upon the Trustees and their successors and substitutes, and any additional Trustees who may be appointed and shall in the sense that they so provide, together with and consistent with the provisions of the within Trust Agreement, govern the administration of the Trust Agreement.

SIXTH: No party dealing with the Trustees in relation to this Trust shall be obliged to see to the application of any money or property of the Trust or to see that the terms of this Trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustees, and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon (a) that at the time of delivery of said instrument the Trust hereby created was in full force and effect, (b) the said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement, and (c) that the Trustees were duly authorized and empowered to execute such instruments.

SEVENTH: The receipt given by the Trustees for any monies or other properties received by them shall effectually discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application, or be answerable for the loss or for the misapplication thereof.

ARTICLE VII

Failure of Employer to Make Contributions

FIRST: The Trustees shall have the power to demand, collect and receive employer contributions and may hold the same until applied to the ultimate purpose herein provided, and may take such steps, including the institution and prosecution of, or the intervention in, any proceeding at law, in Equity or in Bankruptcy as may be necessary or desirable to effectuate the collection of such employer contributions, including but not limiting the provisions for the collection of such employer contributions to such rights and methods as may be provided for in said Collective Bargaining Agreements aforesaid.

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SECOND: In the event that any of the Contributing Employers hereunder shall default in remitting the monies required to be sent by them, pursuant to the terms and conditions hereinafter set forth upon demand by the Board of Trustees or shall refuse to become parties signatory to this agreement upon demand made upon them by the Union, said default, or refusal on the part of any such Employer shall be considered a breach of the Collective Bargaining Agreement between such Employer and the Union, entitling the Union, at its election, to consider the Collective Bargaining Agreement with the said Employer breached in a major way, and it may, in addition to any rights it may have in declaring said Collective Bargaining Contract breached, nevertheless call upon the Trustees to bring such action against the Employer, in law or in equity, or the Union may bring such action in law or in equity to either compel the performance of this Agreement as well as the Collective Bargaining Agreement, or as well to require the Employer to make any and all payments due or to become due by him under the terms of the within Agreement.

THIRD: Nothing contained in this Joint Trust Agreement shall be deemed or construed to impose upon the Associations any duty or obligation to collect, receive or pay over any of the contributions hereunder required to be made and paid by the Employers to the Trustees, nor shall the Associations be deemed guarantors or sureties in respect to any such contributions.

FOURTH: Employer contributions shall become due on the payroll date. The failure of an Employer to pay the contributions required hereunder within ten (10) days after the date due shall be a violation of the collective bargaining agreement between the said Employer and the Union as well as a violation of the Employer's obligations hereunder. Non-payment by the Employer of any contributions when due shall not relieve any other Employer from his obligations to make payments.

FIFTH: The Trustees or the Union shall report immediately the delinquency of any Contributing Employer in the payment of moneys due under this Trust Agreement. The institution or prosecution of any such suit for the collection of moneys or other legal redress shall not be deemed a waiver or reinstatement of such Collective Bargaining Agreement so far as such delinquent Employer is concerned.

SIXTH: Any of the aforesaid Employees who shall have been employed with such delinquent Employer, shall despite such delinquency be entitled nevertheless to receive benefits of the Pension and the deficiency arising from such delinquency shall be made up by drawing upon the reserve funds held by the Trustees, so that at no time shall any of the said Employees be disentitled to any

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benefits hereunder merely by virtue of the delinquency of his Employer in making the contributions required hereunder.

SEVENTH: The Trustees shall have the power to require any Contributing Employer, and a Contributing Employer, when so required, shall furnish to the Trustees such information and reports as they may require in the performance of their duties under this agreement and declaration of trust. The Trustees or any authorized agent or representative of the Trustees shall have the right at all reasonable hours during business hours to enter upon the premises of the Employer and to examine and copy such of the books, records, papers and reports of said Employer as may be necessary to permit the Trustees to determine whether said Employers are making full payment to the Trustees of the amounts required under this Trust Agreement and the aforementioned Collective Bargaining Agreement.

ARTICLE VIII

Integration of Pension Fund with Other Funds

FIRST: The Trust to be set up by the parties herein shall be known as The Joint Pension Fund, International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C: and the Trustees may conduct the business of the Trust and execute all instruments in that name. The Chairman of the Board of Trustees shall be selected from the Employer-Trustees of the Board and the Secretary-Treasurer shall be selected from the Union Trustees of the Board.

SECOND: There are now or may hereafter be in effect other Pension Plans, similar in form and substance to the one hereunder, between the Unions and other Associations of Employers and it is now or may hereafter be provided in such Pension Plans that the same, upon demand of the Unions, may be integrated with the present Plan hereunder, upon the Trustees of such other plans resigning and turning over to the Trustees hereunder all their funds, records and documents in good order pertaining to the said respective Pension Plans, and it is the spirit of this Agreement that, in such event or events, all of the funds of such Pension Plan or Plans shall be merged with and integrated with the Plan hereunder, so that all of the Employees, members of the affiliated Unions, which were covered under such other Plans, shall be and become immediately covered under the scope of this Agreement, and the Employers who are members of such Associations having such Pension Plans, other than the one hereunder, shall immediately be and become bound by the terms of the within Agreement upon their executing a written consent to and assumption

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of the terms and conditions of the within Agreement and they shall hereafter be bound by the terms and conditions hereof as though they had originally been included as parties to this Agreement; and, in such event, the said other Pension Plan shall be discontinued and merged in this Plan which shall thereafter become the effective Plan for all operating engineers. All of the foregoing, however, shall be at the election of the said Unions and shall be at their sole irreviewable discretion.

ARTICLE IX

Accounts, Records and Auditing Thereof

FIRST: True and accurate books of account and records of all transactions shall be kept by the Trustees in care of the Secretary-Treasurer and which shall be audited by a Certified Public Accountant from time to time as the Trustees may determine, but at least annually. Copies of such audits shall be given to each of the Trustees, to the respective Unions and to the respective Associations, and shall be available at all times for inspection by interested and authorized persons during reasonable business hours at the office of the Pension Fund, or such other place as the Trustees may designate.

SECOND: All checks, drafts, vouchers or other withdrawal of funds from the account of the Trust Fund shall be drawn and issued in accordance with the By-Laws hereto annexed, but all withdrawals from the General Fund shall require the signatures of any two of the four Trustees, provided that one is an Employer Trustee and one is a Union Trustee. The Trustees shall in accordance with the By-Laws provide for a Special Account in the name of the Secretary-Treasurer of the Board of Trustees for payment by him or by the Administrator or other agent designated by said Secretary-Treasurer of all routine and ordinary bills and expenses necessary to maintain current operations of the Trust Fund for which he shall be permitted to withdraw on his own signature or the signature of the Administrator or other designated agent and without any countersignature, any funds necessary to operate the normal needs and requirements of the Pension Fund. However, the said Secretary-Treasurer, shall at least once a month report to the Trustees, all sums deposited in or withdrawn from such Special Account and the manner and reason for said disbursements.

THIRD: Each of the Trustees shall be protected from personal suit or liability in acting upon any paper or document believed by him to be genuine and to have been made, executed or delivered by the proper party purporting to have made, executed or deliv-

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ered the same, and shall be protected in relying and acting upon the opinion of legal counsel in connection with any matter pertaining to the administration of or execution of this trust.

FOURTH: All income, profits, recoveries, contributions, forfeitures and any and all moneys, securities and properties of any kind at any time received or held by the Trustees hereunder shall be held for the uses and purposes hereof.

FIFTH: The Pension Fund shall be valued by the Trustees annually at the market value as of the close of business at the end of the last business day preceding the anniversary date of the Pension Plan, but the value of any life insurance or annuity contracts shall not be included in such valuation; and in making such valuation, the Trustees may engage the help, and pay the expenses of, such persons as they may select.

ARTICLE X

Claims and Individual Rights

FIRST: No Employee, or any person claiming by or through such Employee by reason of having been named a beneficiary, in a certificate or otherwise, shall have any rights, title or interest in or to the funds or other property of the Pension Fund or any part thereof, except as specifically provided by the Pension Plan and the applicable rules and regulations thereunder.

SECOND: No moneys, property or equity of any nature whatsoever in the Trust or Trust Fund or policies or benefits or moneys payable therefrom shall be subject in any manner, by any Employee or person claiming through such Employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien, or charge, and any attempt to cause the same to be subject thereto shall be null and void.

ARTICLE XI

Indemnification and Protection of Trustees and Other Persons

FIRST: Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Pension Fund contracted by them as such Trustees, or for the nonfulfillment of contracts, but the same shall be paid out of the Trust Fund and the Trust Fund is hereby charged

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with a first lien in favor of each of such Trustees for his security and indemnification for any amounts paid out by such Trustee for any such liability and for his security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own wilful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

SECOND: The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of the Trust, so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own wilful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any employee, agent or attorney elected or appointed by or acting for the Trustees.

THIRD: The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

FOURTH: The Trustees shall not be liable for the proper application of any part of the Pension Fund or for any other liabilities arising in connection with the administration or operation of the Trust Fund, except as herein provided.

FIFTH: The Trustees may from time to time consult with the Trust's legal counsel and shall be fully protected in acting and relying upon advice of such counsel. Counsel to the Trust Fund may be of counsel to the Union or any other parties to the Agreement and Declaration of Trust.

SIXTH: The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Trust Agreement or instruction as to any question of construction of the Trust Agreement or instruction as to any action thereunder. The Trustees shall be required to join as parties defendant in any such action or proceeding only the Union and the Associations.

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SEVENTH: The costs and expenses of any action, suit or proceeding brought by or against the Trustees or any of them (including counsel fees) shall be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his duties hereunder.

EIGHTH: The Trustees shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Trustees at the principal place of business of the Pension Fund.

ARTICLE XII

Amendments

FIRST: The provisions of this agreement may be amended to any extent and at any time by an instrument in writing executed by the Trustees and consented to and approved by the Union and the Associations provided that no amendment shall divert any of the Trust Estate then in the hands of the Trustees (and already paid in by the Contributing Employers to the Trustees) from purposes of this trust to provide pension, retirement and kindred benefits herein provided for.

ARTICLE XIII

Legal Construction of Plan

FIRST: This Trust is created and accepted in the State of New York and all questions pertaining to the validity or construction of this instrument and of the acts and transactions of parties hereto shall be determined in accordance with the laws of the State of New York.

SECOND: The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the Pension Program herein contemplated. The Trustees shall have power to interpret, apply and construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Associations, the Employers and the Employees.

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THIRD: In the event that any provisions of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Trust Agreement; and the provision or provisions held illegal or invalid shall be fully severable and the Trust Agreement shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

ARTICLE XIV

Savings Clause

If, for any reason, any provision of this Agreement shall be, is, or is hereafter determined by decision, act or regulation of a duly constituted body or authority, to be in any respect invalid, it shall not nullify any of the other terms and provisions of this Agreement, and, in such respect or respects as it may be necessary to conform this Agreement with the applicable provision of law in order to prevent the invalidity of such provision or provisions, then the said provision or provisions shall be deemed automatically amended to conform with such rule, law, regulation, act or decision, and the Union and the Associations, parties to this Agreement, shall, in such case, meet and take the necessary and appropriate action, at a duly constituted meeting, to formally adopt and ratify such amendment or amendments to this Agreement and they shall be deemed included herein as though originally contained in and a part of this Agreement from its inception.

ARTICLE XV

Bonding

The Trustees and the employees of the Pension Fund shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees.

ARTICLE XVI

Termination of the Trust

In the event that the obligation of the Employers to make Employer contributions shall terminate, or upon any liquidation of the Trust Estate, the Trustees shall continue to apply the Trust Estate to the purposes specified in Article III hereof and none other, and upon the disbursement of the entire Trust Estate this Trust shall terminate.

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IN WITNESS WHEREOF, the Trustees, the Associations and Locals 14, 14B, 15, 15A, 15C of the International Union of Operating Engineers, by their proper officers who represented that they were duly authorized to act have executed this Instrument to evidence their acceptance of the Trusts hereby created and their agreements to be bound hereby, the day and year first above written.

TRUSTEES

Union Trustees	*Employer Trustees*
JOSEPH J. DELANEY, L.S.	HAROLD E. MCCORMACK, L.S.
JAMES R. DILLON, L.S.	JAMES B. MARTIN, L.S.

GENERAL CONTRACTORS ASSOCIATION OF GREATER NEW YORK AND ADJACENT CITIES
By: JAMES B. MARTIN, L.S.

BUILDING CONTRACTORS AND MASON BUILDERS ASSOCIATION
By: HAROLD E. MCCORMACK, L.S.

THE CEMENT LEAGUE
By: HAROLD E. MCCORMACK, L.S.

STONE SETTING CONTRACTORS ASSOCIATION
By: MICHAEL MORMILE, L.S.

ALLIED BUILDING METAL INDUSTRIES
By: WILLIAM K. ROSS, L.S.

RIGGING CONTRACTORS ASSOCIATION
By: CLYDE C. SHULTS, L.S.

CONTRACTING PLASTERERS ASSOCIATION
By: JOHN T. MCKEOWN, L.S.

CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION
By: RALPH JOHNSON, L.S.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 14, 14B
By: FRANK J. JOHNSTON, L.S.
(President, Local 14, 14B)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 15, 15A, 15C
By: JOSEPH J. DELANEY, L.S.
(President, Local 15, 15A, 15C)

JOINT PENSION FUND

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO

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THE PLAN

Effective January 1, 1956
As Amended through May 1, 1973

This Plan established pursuant to collective bargaining agreements between the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, of the International Union of Operating Engineers, AFL-CIO and the General Contractors Association of Greater New York and Adjacent Cities, Building Contractors and Mason Builders Association, The Cement League, Stone Setting Contractors Association, Allied Building Metal Industries, Rigging Contractors Association, Contracting Plasterers Association, Construction Equipment Rental Association and Employers participating in the Plan is to provide pensions for the Employees represented by the Unions who are and shall be employed by the Employers participating in the Plan. Responsibility for the general administration of the Plan is placed in a Board of Trustees having equal representation from the Unions and Employers participating in the Plan. All contributions are paid over to the Board of Trustees to be held in trust, invested and disbursed for the exclusive benefit of member of the Plan and Pensioners. An Investment Advisory Agent may be appointed to invest such funds of the Plan as the Board of Trustees may allocate from time to time.

Section 1. Definitions

(1) "Employee" means a person who is in a collective bargaining unit represented by the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D of the International Union of Operating Engineers, AFL-CIO and who is in the employ of any one of the Contributing Employers.

(2) "Contributing Employer" means any one of the members of the General Contractors Association of Greater New York and Adjacent Cities, Building Contractors and Mason Builders Association, the Cement League, Stone Setting Contractors Association, Allied Building Metal Industries, Rigging Contractors Association, Contracting Plasterers Association, Construction Equipment Rental Association, and any other person, firm, or corporation not a member of said Associations, who may employ one or more Employees as above defined.

(3) "Unions" means the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D of the International Union of Operating Engineers, AFL-CIO or their predecessor or successor Union or Unions. Any action under the Plan by a Local Union shall be as certified by its President and Secretary, and the Board of Trustees shall be fully protected in acting upon such certification.

(4) "Board of Trustees" means the Board of Trustees as provided for in the Agreement and Declaration of Trust which is responsible for the administration of the Plan including among other things, the collection, deposit, and disbursement of funds. The Unions and the Contributing Employers shall have equal representation on the Board.

(5) "Employer Contributions" means the payment to the Fund by Contributing Employers of such amounts as may be provided for in collective bargaining agreements between the Unions and Contributing Employers, as herein defined, or as they may hereafter be amended.

(6) "Pensioner" means a member who is retired under the Plan.

(7) "Fiscal Year" means the calendar year.

(8) "Actuarial Equivalent" means the value of one benefit equal to the value of a second benefit when computed on the basis of the rate of interest, the termination and mortality tables, the selection factors, and other actuarial factors as last adopted by the Board of Trustees for the purpose of determining Actuarial Equivalent values.

(9) "Investment Advisory Agent" means the bank or trust company that holds and/or invests such funds of the Plan as the Board of Trustees may from time to time turn over to the investment Advisory Agent for investment. The determination of the amount or amounts to be so turned over to the Investment Advisory Agent shall rest in the sole discretion of the Board of Trustees.

(10) "Agreement and Declaration of Trust" means the Agreement and Declaration of Trust made and entered into on January 1, 1956, in the City and State of New York by and between the Unions, as herein defined, the General Contractors Association of Greater New York and Adjacent Cities, Building Contractors and Mason Builders Association, The Cement League, Stone Setting Contractors Association, Allied Building Metal Industries, Rigging Contractors

Association, Contracting Plasterers Association, Construction Equipment Rental Association, and Thomas A. Maguire and James R. Dillon, Union Trustees and Harold E. McCormack and James B. Martin, Employer Trustees.

(11) "Beneficiary" means the person designated by a Participant or Pensioner to receive any monies due the Participant or Pensioner at the date of his death or becoming due by virtue of his death.

(12) "Gross Wages" means that portion of the wages of each Employee used in determining the amount of Employer Contributions, as herein defined, made to the Fund on behalf of each Employee.

(13) "Applicable Effective Date" means such date after December 31, 1955 on which an Employer, as herein defined shall become obligated to make contributions to the Fund on behalf of Employees.

Section 2. Participation

(1) Every Employee who had not passed his 65th birthday prior to January 1, 1956 becomes a Participant of the Plan as of the first day on which a Contributing Employer becomes obligated to make a contribution to the Fund on behalf of such Employee. Such a Participant shall cease to be a Participant only as follows:

A. If he earns less than five tenths' year credit from employment by one or more Contributing Employers during a period of five successive calendar years beginning with the year of his participation, except that this section shall be suspended:

(i) During one period of service in the Armed Forces of the United States (including the Merchant Marine during a declared state of war), not in excess of six years.

(ii) During any period of mental or physical inability to work in the industry established by medical evidence to the satisfaction of the Board of Trustees.

(iii) After a Participant has accrued at least 15 years of Credited Service, provided he ceases to work in the industry.

B. If he dies prior to retirement.

C. If he retires under the Plan.

(2) Every Employee who is unable to work in the industry on January 1, 1956 because of a mental or physical disability as established by medical evidence to the satisfaction of the Board of Trustees, shall become a Participant of the Plan as of January 1, 1956. Such a Participant shall cease to be a Participant only if he recovers from his disability and thereafter does not become an Employee, as herein defined, for a period in excess of two years, or if he dies prior to retirement or if he retires under the Plan.

(3) Every Employee who had passed his 65th birthday prior to January 1, 1956, becomes a Participant of the Plan as of January 1, 1956. Such a Participant shall cease to be a Participant only if he dies prior to retirement or if he retires under the Plan.

(4) All present and future salaried Employees of any of the Unions, the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D shall be eligible for participation in the Plan, provided contributions, as herein defined, are made by their Employers to the Fund in a manner acceptable to the Board of Trustees and at the same rates as may be required of other Employers.

(5) If a Participant ceases to be a Participant and again becomes a Participant, he shall be considered a new Participant for all purposes of the Plan, except in the case of a Pensioner who is reemployed by any one of the Contributing Employers and thereupon again becomes a Participant.

(6) A Participant or Pensioner shall file such information as the Board of Trustees shall require in order to establish his eligibility for a pension before he shall be entitled to a pension under the Plan.

Section 3. Credit For Service

A. Past Service

(1) Every Employee who becomes a Participant prior to January 1, 1961 shall be credited with Past Service, computed to the nearest half year, for each year or portion thereof of his employment within the jurisdiction of the Unions between January 1, 1936 and the effective date of the Plan.

(2) Every Employee who becomes a Participant on or after January 1, 1956 but no later than the date on which his Employer has become obligated to make contribution to the Pension Plan, shall be credited with years of

Past Service, computed to the nearest half year for each year or portion thereof of his continuous employment by Contributing Employers, as herein defined, within the jurisdiction of the Unions. Such service shall be credited for one of the following periods and the Participant shall have the right to elect the alternative of his choice:

(a) Credit for service between January 1, 1936 and January 1, 1956

OR

(b) Credit for service prior to the Applicable Effective Date, as above defined, to a maximum of 20 years.

(3) For purposes of proof only, membership in the Unions, as herein defined during the period immediately prior to January 1, 1956 or the Applicable Effective Date, shall be conclusive evidence of employment within the jurisdiction of the Unions during such period.

B. Future Service

A Participant shall be credited with Future Service at the rate of one-tenth year for each $500.00 of wages reported to the Pension Fund on or after January 1, 1956 or the Applicable Effective Date, whichever is later while in the employ of one or more Contributing Employers during any calendar year. Credit will not be allowed for fractional portions of a tenth nor will an Employee be allowed more than ten-tenths in any one calendar year.

Section 4. Pension Benefits

(1) Normal Pension

(a) A Participant who initially retires on or after January 1, 1968 shall be eligible

for a Normal Pension provided he has reached his 62nd birthday and provided further that he has at least 15 years of Credited Service either Past Service or Future Service or a combination of both, and provided further that, if the Participant elects to be credited for Past Service pursuant to Section 3. A. (2) (b) hereof, the 15 years shall include at least 5 years of Future Service credit.

(b) The monthly amount of Normal Pension shall be equal to the sum of: A Past Service Pension equal to the number of years of Past Service Credit, as defined in Section 3, multiplied by $10.00, with a maximum of $200.00

plus

A Future Service Pension equal to the number of years of Future Service Credit, as defined in Section 3, multiplied by $12.00.

(2) Deferred Disability Pension

(a) A Participant who has reached his 50th birthday and has thereafter become mentally or physically unable to work in the industry, as established by medical evidence to the satisfaction of the Board of Trustees, shall be eligible for a Deferred Disability Pension commencing at any time after his 62nd birthday provided he has at least 15 years of Credited Service either Past Service or Future Service or a combination of both and provided further that, if the Participant elects to be credited for Past Service pursuant to Section 3A. (2) (b) hereof, the

15 years shall include at least 5 years of Future Service credit.

(b) If initial retirement from the industry is on or after January 1, 1968, the monthly amount of Deferred Disability Pension payable at age 62, shall be equal to the Normal Pension to which the Participant would have been entitled on the basis of his Credited Service as defined in Section 3, above, to the date of his disability retirement from the industry.

(3) Early Disability Pension

(a) A Participant who initially retires on or after January 1, 1968 shall be eligible for an Early Disability Pension commencing immediately provided he has reached his 50th birthday and has thereafter become mentally or physically unable to work in the industry, as established by medical evidence to the satisfaction of the Board of Trustees and provided he has at least 15 years of Credited Service either Past Service or Future Service or a combination of both and provided further that, if the Participant elects to be credited for Past Service pursuant to Section 3A. (2) (b) hereof, the 15 years shall include at least 5 years of Future Service Credit.

(b) The monthly amount of Early Disability Pension shall be the actuarial equivalent of the Normal Pension to which the Participant would have been entitled on the basis of his Credited Service as defined in Section 3, above, to the date of his early disability retirement.

(4) Disability Award Pension

(a) A Participant who has been awarded a Social Security Disability Pension and initially retires on or after January 1, 1968, shall be eligible for a Disability Award Pension from this Fund, provided he has at least 15 years of Credited Service either Past Service or Future Service or a combination of both and provided further that, if the Participant elects to be credited for Past Service pursuant to Section 3.A (2) (b) hereof, the 15 years shall include at least 5 years of Future Service credit.

(b) The monthly amount of disability Award Pension, commencing at any age, shall be equal to the Normal Pension to which the Participant would have been entitled on the basis of his Credited Service as defined in Section 3, above, to the date of his Disability retirement.

(5) Vested Pension

(a) A Participant who has at least 15 years of Credited Service, either Past Service or Future Service or a combination of both, and thereafter ceases to work in the industry shall be eligible for a vested Pension payable at age 62.

(b) The monthly amount of Vested Pension shall be equal to the monthly amount of Normal Pension to which the Participant would be entitled if he were applying for such benefit pursuant to subsection (1) of this Section 4 on the date on which he ceases to work in the Industry.

(c) In the event that a Participant eligible for a Vested Pension again becomes employed by a contributing employer, he may increase his Future Service Pension by earning additional credits, as defined in Section 3.

(6) Three Year Certain

(a) If a Pensioner in receipt of a retirement benefit from this Fund shall die within the three year period beginning with the original effective date of his pension benefits, then the monthly pension benefit to which he was entitled at the date of death shall become payable to his designated beneficiary for the remainder of the said three year period, and shall thereupon cease. Each Pensioner shall designate a beneficiary in writing in the form and manner required by the Trustees.

(b) For purposes of this subsection (6) only, a Participant who fulfills all the requirements for a Normal Pension but dies prior to making application for any benefit provided by this Fund shall be considered a Pensioner in receipt of a normal retirement benefit. His monthly retirement benefit shall be calculated as if he had made application therefor in the day preceding the date of death and the amount so determined shall become payable to his designated beneficiary for a three-year period, in accordance with the provisions of paragraph (a) of this subsection (6).

Section 5. Payment of Benefits

(1) Payment of pension benefits to Pensioners pursuant to the provisions of Section 4 shall commence as of January 1, 1957.

(2) Except as hereinafter provided, all pensions shall be payable for life on the first day of each month commencing on the date of retirement and continuing to and including the month in which death occurs except that, if applicable, payments to a beneficiary shall be continued in accordance with the provisions of Section 4 (6).

(3) Re-employment of Pensioners

A. Any Pensioner who receives wages from a Contributing Employer within the jurisdiction of the Unions shall not be entitled to a pension benefit for any month in which he works more than 32 hours from such employer.

B. Any Pensioner who becomes re-employed shall not be permitted to increase the amount of his original pension, except in the case of a Disability Award Pensioner as herein set forth in paragraph C of this subsection (3).

C. If a person in receipt of a Disability Pension ceases to be mentally or physically disabled, his pension shall terminate as of the last day of the month of such recovery. If he thereafter becomes an Employee and subsequently retires under the Plan at age 62 or later, he shall receive the same amount as he received as a Disability Pensioner plus any additional pension based on Credited Service earned from the date of re-employment to his normal retirement date. Any person in receipt of a Disability Pension shall be required to submit to such physical examination as the Board of Trustees may re-

quire at its expense, not more often than once a year. On refusal or failure to submit to such examinations, all benefits shall terminate forthwith.

If a person in receipt of a Disability Award Pension ceases to be eligible for a Social Security Disability Pension at any time prior to age 62, then the Disability Award Pension shall terminate as of the last day of the month for which a Social Security Disability Pension was payable. If he thereafter becomes an Employee and subsequently retires under the Plan at age 62 or later, he shall receive the same amount as he received as a Disability Award Pensioner plus any additional pension based on Credited Service earned from the date of re-employment to his normal retirement date.

(4) No pension shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; nor shall any such pension be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such pension. If any pensioner becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge any pension hereunder, then such pension shall, in the discretion of the Board of Trustees, cease and determine, and, in that event, the Board of Trustees shall hold or apply the same to or for the benefit of such Pensioner, his spouse, children, parents, or their dependents, or any of them, in such manner and in such proportion as the Board of Trustees may deem proper.

Section 6. Employer Contributions

(1) Each Contributing Employer shall contribute to the Plan such amounts as may be provided for in collective bargaining agreements between the Unions and Contributing Employers or as they may hereafter be amended and shall forward such contributions to the Board of Trustees at such time or times as the Board of Trustees may prescribe together with such information as the Board of Trustees may require.

Section 7. Administration of the Plan

(1) The General administration of the Plan and the responsibility for carrying out the provisions hereof is placed in the Board of Trustees, the members of which may or may not be Participants in the Plan of Contributing Employers, and which shall be constituted in accordance with the terms of the Agreement and Declaration of Trust.

(2) The Board of Trustees shall adopt from time to time service and mortality tables and a rate of interest for use in all actuarial calculations required in connection with the Plan, and shall appoint actuaries from time to time to serve at its pleasure and to make annual actuarial valuations of the contingent assets and liabilities of the Plan and shall certify to each Contributing Employer and to the Unions the results of such actuarial valuations. Notwithstanding anything herein to the contrary, the amount of benefits that will be provided shall not exceed the benefits actually available on the basis of such annual actuarial valuations.

Section 8. Management of Funds

(1) All of the funds of the Plan shall be held by the Board of Trustees in trust for use in providing the benefits under the Plan and paying its expenses, provided that no part of the corpus or income of the trust shall be used for or diverted to purposes other than for the administration of the Plan and the exclusive benefit of Participants and Pensioners under the Plan, and provided that no person shall have any interest in, or right to, any part of the earnings of any trust pertaining to this Plan, or any rights in, or to, or under such trust or any part of the assets thereof, except as and to the extent expressly provided in the Plan.

(2) The Board of Trustees may appoint an Investment Advisory Agent whose principal office is located in the City of New York for the purpose of investing or recommending the investment of all funds not required for the administration of the Plan and the payment of current benefits.

Section 9. Amendments

(1) Subject to the provisions of paragraph (2) below, the provisions of the Plan may be modified or amended by the Board of Trustees, retroactively, if necessary, to the extent the Board of Trustees finds such modification or amendment necessary to bring the Plan into conformity with governmental regulations expressing the public policy or condition which must be conformed with in order to qualify the trust for the Plan as tax exempt under Sections 401 and 501 of the Internal Revenue Code.

(2) The provisions of the Plan may also be modified or amended by the Board of Trustees at a regular or special meeting. In no event, however, shall any modification or amendment of the provisions of the Plan make it possible for any part of the funds of the Plan to be used for, or diverted to purposes other than for the exclusive benefit of persons in the employ of employers then or previously contributing to the Plan.

Section 10. Terminations

(1) The Plan may be terminated by the Board of Trustees only with the consent of the Unions and a majority of the Contributing Employers, and, in such event, all the funds of the Plan shall be used for the exclusive benefit of Participants and Pensioners as of the date of termination of the Plan, and shall be allocated in shares determined by the Board of Trustees on the basis of reserve values for the actuarial valuation made in accordance with subsection (2) of Section 7, in the following order:

First, each Pensioner shall be entitled to a share equal to the reserve computed to be required for his pension; and

Second, each Participant who has reached his 62nd birthday and has otherwise fulfilled the requirements of Section 4, hereof, shall be entitled to a share equal to the reserve computed to be required for his pension credits; and

Third, each other Participant shall be entitled to a share equal to the reserve computed to be required for his pension credits; provided that if the funds of the Plan are insufficient to

provide in full for the shares under any of the above paragraphs, after provision for all shares under previous paragraphs, each share under such paragraph as to which the funds are insufficient shall be reduced pro rata.

(2) The Board of Trustees may require that all shares be withdrawn in cash or in immediate or deferred annuities or other periodical payments as they may determine.

(3) Anything herein to the contrary notwithstanding, the rights of all Participants and Pensioners to benefits accrued to the date of any complete discontinuance of contributions, to the extent then funded shall be non-forfeitable.

Section 11. Construction

(1) The provisions of the Plan shall be construed, regulated and administered under the laws of the State of New York.

(2) The determination of the Trustees as to the interpretation and application of this Plan shall be binding, final and conclusive.

(3) The Board of Trustees shall have full power to administer this Plan and to adopt forms and rules governing such administration.

NOTICE OF APPEARANCE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186 (c) (5)	NOTICE OF APPEARANCE 74 Civ. 2887 (RJW)

----------X

S I R S :

PLEASE TAKE NOTICE that Local Unions 14 and 14B of the International Union of Operating Engineers, AFL-CIO, and Thomas J. Nolan, as Trustee of the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C and 15D AFL-CIO, hereby appear in the above captioned proceeding and that the undersigned firm has been retained to represent the aforesaid

NOTICE OF APPEARANCE

parties in such proceeding and demands that a copy of all papers in this action be served upon the undersigned at the office and post office address listed below.

Dated: Garden City, New York
August 20, 1974

Yours, etc.,

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P. C.

By: /s/ ROBERT A. KENNEDY
Robert A. Kennedy
A Member of the Firm
1461 Franklin Avenue
Garden City, New York 11530
516 248-5757
Attorneys for Local Unions 14 and 14B

TO: MESSRS. CORCORAN AND BRADY
11 Park Place
New York, New York 10007
Attorneys for the Trustees of
the Joint Welfare Fund and the
Joint Pension Fund of the
International Union of Operating
Engineers, Local Unions 14, 14B,
15, 15A, 15C, 15D, AFL-CIO

BEST COPY AVAILABLE

NOTICE OF MOTION TO DISMISS PETITION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

NOTICE OF MOTION

Index No. 74 Civ. 2887

----------X

PLEASE TAKE NOTICE, that the undersigned will move this Court at Room 519, United States Court House, Foley Square, New York, before the Honorable Robert J. Ward, at a time and place to be fixed by said Court, for an order dismissing the Petition herein pursuant to Rule 12(b) Federal Rules Civil Procedure on the ground that the Court lacks jurisdiction over the subject matter (29 U.S.C. 186(c)(5)(c)),

NOTICE OF MOTION TO DISMISS PETITION

and on the further ground that Petitioners herein have failed to comply with the provisions of the Employee Retirement Income Security Act.

Yours, etc.,

DORAN, COLLERAN, O'HARA, ~~ROLLIO~~ & DUNNE, P.C.

BY: _____
A Member of the Firm
1461 Franklin Avenue
Garden City, New York 11530
(516) 248-5757
Attorneys for Local Unions 14 and 14B, AFL-CIO and THOMAS J. NOLAN, as Trustee of the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers.

TO: CORCORAN AND BRADY, ESQS.
Attorneys for the Trustees of the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO
11 Park Place
New York, New York

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee Robke
330 Madison Avenue
New York, New York 10017

CUNNINGHAM & KAMEN, ESQS.
Attorneys for Trustee Gerosa
800 Third Avenue
New York, New York 10022

AFFIDAVIT OF THOMAS J. NOLAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

Index No.
74 Civ. 2887

AFFIDAVIT

----------X--

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

THOMAS J. NOLAN, being duly sworn, says:

1. I am Business Manager and Financial Secretary of Local 14 and 14B of the International Union of Operating Engineers and Union Trustee for the Joint Welfare Fund and Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, (hereinafter the "Joint Funds") and am fully familiar with the facts and proceedings heretofore had herein. I make this affidavit in support of Local 14's motion to dismiss the Petition herein on the grounds that this Court lacks jurisdiction to grant the relief requested, and on the further ground that the failure of Trustees of the Joint

Funds to comply with the provisions of the Employee Retirement Income Security Act (ERISA) would render any subsequently developed plan of dissolution null and void.

2. At a Special Meeting of the Joint Funds on June 11, 1974, as indicated in the "minutes" (annexed hereto as Exhibit A), a motion to terminate the Joint Funds under the respective termination provisions was unanimously passed. At that time it was the Trustees' position that the proposed allocation of the Funds pursuant to the termination provision would be submitted to this Court under the impasse provision of each Fund, although at no time was there any impasse concerning a plan of dissolution.

3. After a review of the Petition herein and the incidents and occurrences subsequent to the aforesaid Trustees vote, it became apparent that the other Trustees had no intention to address themselves to meaningful discussion under the termination provisions of the funds, especially Section 10 of the Plan for the Joint Pension Fund which requires an actuarial evaluation of pension credits in the case of termination of such Fund. Instead, they were content to abdicate their responsibility in the administration of the Funds in favor of an impartial umpire appointed by the Court.

AFFIDAVIT OF THOMAS J. NOLAN IN SUPPORT OF MOTION

4. At a meeting of the Joint Funds on November 8, 1974, called at the instigation of this Court to determine whether an impasse exists as to the manner in which the Funds are to be separated, Trustee Maguire, representing Local 15 in the Funds, offered to divide the Funds on the basis of giving 20% of the Funds to Local 14. I responded almost in jest that we would accept 50%. (See, "minutes" annexed hereto as Exhibit B). It must be understood that these figures were completely unsupported and lacking in any factual basis since at no time had an actuarial evaluation been made as is required under the Plan (supra.). To indicate the extent to which the Trustees would go to avoid meaningful discussion on this issue, at one point in the meeting an employer trustee jumped up and asserted that they have an impasse in that "they wish to go to Court and Local 14 does not" (Exhibit B).

5. I am concerned primarily with the consequences of a premature proceeding in the federal court. If a court, lacking in jurisdiction, were to appoint an umpire who would coordinate and supervise the distribution of the Funds, the Funds would be subject to continuing liabilities and the resulting instability of the Funds would inure to the detriment of the membership of Local 14. Not only is there

lacking a "deadlock" in the present situation, there is lacking the essential prerequisite to a deadlock, namely, positions on each side of an issue. I am not certain that I would be unwilling to accept Local 15's position on this issue if, in fact, they asserted a position consistent with the mandates of our Plan. Moreover, at no time did the Trustees attempt to choose an impartial arbitrator to break this deadlock as is required under the Plan.

6. The Trustees' attempt to avoid ERISA also causes some concern. I have been informed by counsel that ERISA creates a corporation known as the Pension Benefit Guaranty Corporation and that one function of the aforesaid corporation is to protect participants in pension and possibly other type plans by providing a procedure for underwriting accrued benefits. To the extent that ERISA is applicable to the present dissolution of the Joint Funds, I believe that the Trustees are required to comply in full with its provisions for the full protection of all participants in the Joint Funds.

7. Finally, the Petition herein is so slanted in favor of Local 15 that it does more than merely ask the court to appoint an umpire, it attempts to direct the umpire toward a proposed decision. The petition herein seeks to,

AFFIDAVIT OF THOMAS J. NOLAN IN SUPPORT OF MOTION

and does, give the impression that Local 14 is a marginal contributor to the Joint Funds. It gives the impression that the membership ratio between the respective locals (15 to 14) is 4 to 1 and that for the most part the salary levels are equal. Yet on the average, members of Local 14 earn significantly more than members of Local 15. Moreover, on the average, 30 members of Local 15 become members of Local 14 each year. Before a solution of the present problem can be rendered, consideration of this mobility towards the higher grade Local will have to be considered.

8. Accordingly, your deponent respectfully requests that the petition herein be dismissed on the grounds that this court lacks jurisdiction to grant the relief requested.

/s/ Thomas J. Nolan

THOMAS J. NOLAN

Sworn to before me this
16th day of December, 1974.

JOHN F. MILLS
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible], 1975

EXHIBIT A, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN.

Special meeting of the Joint Welfare and Pension Funds of Local Unions 14 & 15 held on the 11th of June 1974 at the Engineers Club, 32 West 40th Street, New York, New York.

Those present for Trustees: Alfred G. Gerosa, George E. Robke, Thomas J. Nolan and Thomas A. Maguire. Alternate Trustees: Theodore King and John T. Murphy were also present. In attendance were Mr. William J. Corcoran, Council for the Funds, Mr. Joseph Salcito, Fund Administrator and Mr. Nicholas Lore, Fund Co-Administrator. Others in attendance were Mr. Richard O'Hara, council for Local 14, Messrs. John J. Messinger, Joseph Rizzuto and Jerry Finn of Local 14, Nicholas J. Laccetti and Philip B. Polak of Martin E. Segal and Co. and William C. Enneran of the G.C.A.

The special meeting was called to order by Chairman Gerosa at 11 A.M..

The Chair requested that the letter from Trustee Nolanto the other Trustees and the responses to Trustee Nolan's letter be acknowledged. A copy of the three letters is attached.

Trustee Nolan requested that the Fund (Pension and Welfare) be split as soon as possible. Trustee Maguire agrees with this course of action. Having this issue before the Trustees to resolve the Chair decided to not answer Trustee Nolan's letter at the special meeting, but to lay the subject aside until the regular meeting schedule for the 18th of July, 1974.

After much discussion on the splitting of the funds, the course of action that should be followed to serve all of our members without prejudice and how to provide protection for the Trustees. The following motion was placed before the Chair by Trustee Nolan.

These Funds shall be terminated under the ~~perspective~~ RESPECTIVE termination provisions thereof the approval of the termination and allocation of the Funds in accordance with the above to be submitted to the U.S. District Court under the impass provision of each Fund and termination shall be effected by June 30, 1975, but no later.

The employer trustees shall have the right to special counsel but in no event shall these funds be liable for a fee in excess of $5,000. All trustees individually and jointly and their heirs and estates be protected from any action due to actions of any kind because of termination of the funds.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN

Appropriate insurance in the form of "Hold Harmless" be provided for all trustees, that the trustees for their protection be allowed to pursue any action to protect themselves caused by the termination of the funds at the expense of the funds. The motion was seconded by Trustee Robke and was unanimously passed.

The meeting was adjourned at 1:40 P.M..

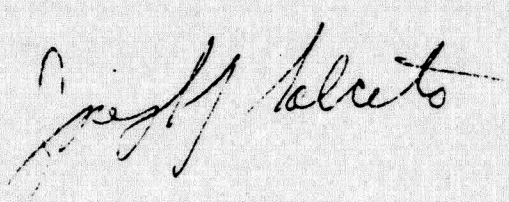

EXHIBIT B, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN.

Special Trustees Meeting of the Joint Welfare & Joint Pension Fund of the I.U.O.E. held on Friday Nov. 8, 1974 at the Gen'l. Contr. Assoc.

The Meeting was called to order at 2:15 P.M. by Trustee Gerosa.

Those present were Trustees Alfred G. Gerosa, George E. Robke, Thomas A. Maguire, and Thomas J. Nolan. Others present were Alternate Trustee Joseph Rizzuto, Administrators Nicholas Lore and Joseph J. Salcito, Attorneys William J. Corcoran, Peter D. Stergios, Richard L. O'Hara, Edward Fee and Sol Tabor of Tolley International.

The meeting was called by the Trustees to determine whether an impasse exists as to the manner in which the Funds are to be separated.

Attorney O'Hara contended that there is no impasse and that the actuary for the Fund should file a report to the Trustees outlining the distribution of the funds and then Locals 14 and 15 can decide if the figures are acceptable.

Trustee Gerosa stated that if the Locals agree it does not mean that the Employer Trustees will agree.

Trustee Maguire made an offer of 20% of the funds to Local 14. Trustee Nolan stated Local 14 will accept 50%. Attorney O'Hara asked the Trustees to make a motion to have the actuary submit breakdown procedures.

Attorney Corcoran stated he felt that Attorney O'Hara is avoiding the issue. When they appeared in court and gave the background of the funds he alluded to the charges made by Local 14 in their letter and the answers from Local 15 and the Employer Trustees. The representative of the Insurance Department, at the last Trustees meeting, questioned Trustee Rizzuto regarding the five employers they claimed were not making proper contributions to the Funds and Trustee Rizzuto commented that it was political strategy. Martin Segal & Co. claims that there are inaccuracies and inconsistancies in the Fund, one of which is that many cards do not have the Local designation. Up to this point they were joint Funds and the fact that the Local Number did not appear was immaterial.

At the district court Attorney O'Hara claimed he wanted the petition removed because the Pension Reform Act governs the issue. Attorney Corcoran disagrees because the law is not effective for multi-employer funds until January 1, 1978, and not applicable now. Why does Local 14 not want to have the Funds separated by a master appointed by the court? The Funds are not to be terminated, after separation of Funds, they will continue to operate. Most important is that Trustees are held immune from a future lawsuit by participants claiming that Trustees did not act properly. If the court decides

EXHIBIT B, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN

case, Trustees will be free of lawsuits. The Taft Hartley Bill says if there is an impasse it must be filed with the Federal Court. The Trust Agreement makes the same statement. Further the petition was filed prior to the signing of the Pension Reform Act. Attorney Corcoran's opinion is that the separation of the Funds has been properly filed with the Court. Why does Local 14 not want the Court to decide? There is an impasse because each Local will lay claim to what they believe is theirs. Martin Segal Co. issued a report showing that Local 14 has a claim to $12,000,000.00.

Trustee Gerosa stated that Martin Segal Co. memorandum of October 31, 1974 creates an impasse with the many issues it raises.

Trustee Rizzuto stated that Local 14 never claimed how many participants were in the Fund.

Attorney O'Hara stated he still disagrees and wants the Trustees to have the Funds' actuary submit plan of dissolution.

Trustee Gerosa asked why the court cannot decide.

Attorney O'Hara will not agree to that.

Trustee Rizzuto stated that there are three different sets of participants.

Attorney O'Hara would like to have actuary compile current liability of Funds.

Attorney Corcoran stated that the District Court Judge directed the Trustees to meet to agree that there was an impasse and feels that Attorney O'Hara is not acting in good faith.

Attorney O'Hara stated he felt there are problems in the petition that was filed and he must move to dismiss and suggested again that the actuary of the Fund make up a report. Attorney Corcoran asked what the alternative was. Attorney O'Hara stated that if there is no impasse the court does not have jurisdiction.

Trustee Robke stated that the employers feel they have an impasse in that they wish to go to Court and Local 14 does not.

Attorney Stergios stated that if the Trustees cannot agree then it would create an impasse.

Attorney O'Hara wants the actuary to present a report for the separation of the Funds and then if the Trustees disagree he will agree that there is an impasse.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN

Trustee Gerosa stated that the B.T.E.A. will not engage an actuary to do a study and his group will not agree to any actuarial report unless it was approved by the Court. Attorney O'Hara asked how the Court will decide without figures. Attorney Corcoran advised that the Master will decide and supervise separation and both sides can then argue merits of the Court's decision.

Trustee Gerosa stated he does not believe Local Unions can agree and will not agree to anything less than the Court deciding the issue.

Trustee Maguire stated that when the issue first came up Trustee Nolan asked for separation. Each Local had their actuary make a report and Trustee Gerosa has stated that the employers will not agree to either actuarial report on dissolution.

Mr. Tabor advised that the Funds have been Joint Funds and records have always been kept combined and not separately.

Attorney O'Hara made a motion in behalf of Trustee Nolan as follows: Motion to direct the Funds' actuary to prepare and distribute to the Trustees a proposed plan of distribution/in pursuant to the Trustees previous motion to terminate.

Trustee Gerosa asked if there was a second to Trustee Nolan's motion and noted that there was no second to the motion.

Trustee Robke stated that because there seems to be a dispute regarding the number of participants and dispute regarding the allocation of money of funds in that Trustee Nolan said he would accept 50% and Trustee Maguire has offered 20%, that this represents an impasse and a motion be made as such.

Trustee Nolan said that the 50% figure was not a motion and if the actuary comes up with a report does not believe this will be an impasse.

Attorney O'Hara said there is not enough adequate information to act on.

Trustee Maguire seconded Trustee Robke's motion and Trustee Gerosa, Trustee Robke and Trustee Maguire voted in favor of the motion and Trustee Nolan voted No.

Trustee Rizzuto asked if Attorney Corcoran would clarify unit vote.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF THOMAS J. NOLAN

Attorney Corcoran stated that at a meeting a number of years ago that Trustee James Dillon raised a point in which Attorney Corcoran ruled in his favor and at the time it was decided that each Trustee had one vote.

Attorney Corcoran asked if he was authorized to notify the Court that there is an impasse. Trustee Nolan stated that he objects.

Trustee Gerosa would like a motion requesting Attorney Corcoran ask for a deferment of Sec. 414B of the new Pension Reform Act regarding Fiduciaries responsibility which is to be effective January 1, 1975. Trustee Robke made the above motion. It was seconded by Trustee Maguire and passed.

Trustee Gerosa raised the question of insurance coverage under the new Pension Reform Act of 1974.

Mr. Tabor advised that his firm is in the process of making up application at this time and upon completion it will be forwarded.

Trustee Robke stated that the Trustees never received a report of the meeting which was held at Local 14 offices with Trustee Maguire, Trustee Nolan, Funds' Actuary, Funds' Attorney, Funds' Administrators, Trustee Rizzuto, Gerald Finn and Martin Segal & Co.

Trustee Gerosa instructed that a written report regarding the outcome of that meeting be submitted to the Trustees.

Trustee Gerosa then brought up the investment policy.

Trustee Maguire stated that he was not in favor of the last recommendations submitted by Shield, Model Roland and would like the surplus money invested in U. S. Notes. He advised the Co-Administrator to check with him before any recommendations are approved.

Trustee Gerosa said it appeared as though the return on the latest Shield Model Roland recommendations were less than those originally submitted.

Trustee Maguire stated that he felt U. S. Notes at 8% are a good investment at this time.

Trustee Gerosa directed the Funds' Attorney and Actuary to review the New Pension Reform Act and notify the Trustees of any change required in the existing trust instrument to comply with the Federal Pension Reform Act of 1974.

There being no further business the meeting adjourned at 3:50 P.M.

AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)	:	AFFIDAVIT IN OPPOSITION TO MOTION OF LOCAL 14 TO DISMISS PETITION Index No. 74 Civ. 2887 (R.J.W.)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS A. MAGUIRE, being duly sworn, deposes and says:

1. I am thePresident and Business Manager of Local 15, 15A, 15B, 15C, 15D, International Union of Operating Engineers, AFL-CIO, and Union Trustee and am familiar with the facts in this case. I make this affidavit in opposition to the Motion of Local 14 to dismiss the Petition on the claim of Local 14 that this Court lacks jurisdiction of the proceeding. Local 14 further contends that the Trustees of the Joint Funds have failed to comply with the provisions of the Employee Retirement Income Security Act.

AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION

2. Since the Petition dated June 27, 1974 was filed and addressed to this Court seeking the appointment of a Special Master pursuant to the provisions of the Taft-Hartley Law, with respect to the separation of Local Union 14 from the joint benefit funds, the representatives of Local 14 and their Attorneys have done everything in their power to take this proceeding away from the jurisdiction of this Court, for reasons that are not altogether known and clear.

3. Local 14, its representatives and attorneys in their attempt to remove this proceeding from the jurisdiction of the U.S. District Court have asserted a number of reasons, wome of which they hope will stick and get them out of the Federal Court. For reasons that will follow, I believe that they will not succeed. Not that they do not wish to see the Joint Funds separated, but they do not wish this Court to be the means by which it is to be accomplished. Certain proof to follow will demonstrate that the so-called reasons assigned by Local 14 to remove this proceeding from the District Court are more contrived then genuine.

4. The reasons that are contrived or made ostensible for the accomodation of Local 14, its representatives and attorneys are as follows:

(a) The Trustees intended to "terminate" the Funds

and not "separate", "divide" or "split" the Funds;

(b) That an impasse at no time confronted the Trustees so as to warrant resort to this Court for assistance under the appropriate provisions of the Taft Hartley Law;

(c) That the provisions of theEmployee Retirement Income Security Act (ERISA) is indicated rather than the provisions of the Taft Hartley Law.

I believe and I have been so informed by Counsel that none of these so-called reasons is true, factual or genuine.

5. I believe that I can correctly inform this Honorable Court that the reasons that initially generated the momentum for the splitting of these Funds was "politics". The "politics" to which I refer are the confrontations which the Administration and certain officers of Local 14, 14B, were burdened with by opposing factions of the membership in contemplation of an election within Local Union 14 which was to take place in the Fall of 1974. Some factions within the membership of Local 14, 14B, were of the opinion that they should be entitled to a higher differential in Pension Benefits on the erroneous assumption that the members of Local 14 were receiving a higher rate of pay then the members of Local 15, 15A, 15C and 15D. Inasmuch as the rate of contribution to both the Welfare and Pension Funds, in accordance with the provisions of the Collective Bargaining Agreements executed with

the Employer Associations and individual employers required the payment of 5% on the gross wages of all employees embraced within (1) Locals 14, 14B and (2) Locals 15, 15A, 15C, 15D, said factions in Local 14, 14B demanded larger Pension Benefits then their counterparts in Local 15 and its branches aforesaid. To mute the clamour of the faction that made these demands, the Administration had to take action.

Soon a rumor developed which became louder and broader as the nomination and election of officers in Local 14, 14B became nearer and nearer to the effect that the sum of Ten Million Dollars was missing from the Joint Funds. Accordingly, some action had to be taken by the Administration.

In the unsupported contention that the administration of the Joint Funds was being administered and supervised by personnel selected and dominated by the Administration of Local 15, a "hue and cry" was raised to have some representative of Local 14 appointed as Co-Administrator of the Joint Benefit Funds. Apart from the contentions that the Administration of the Joint Funds was weighted in favor of Local 15, the fact of the matter is that the present Administrator, Mr. Joseph J. Salcito, was at all times the Assistant Administrator to Mr. James V. O'Sullivan and was in no way the selectee of Local 15. Actually, on July 1, 1950 almost 25 years ago, when the Joint Welfare Fund was

established upon the effective date of the New York State Disability Benefits Law, Mr. O'Sullivan was appointed by the late Joseph J. Delaney, my predecessor, as President and Business Manager of Local 15 and who, at the time, was International Vice President and later General President of the International Union of Operating Engineers. Mr.O'Sullivan was a member of the Union at the time but had credentials of competency which demonstrated that he was able to administer these joint benefit funds by reason of having attended the Bankers Institute and had taken business courses where he familiarized himself with matters of money, finance, investments, pensions, etc. Mr. Joseph Salcito was thereafter appointed as Assistant Administrator and continued in this position in excess of 20 years until 1973 when Mr. O'Sullivan retired by reason of ill health. Mr. Salcito succeeded Mr. O'Sullivan as the Administrator in the ordinary course of events by reason of his seniority, competency and knowledge gained over the 20 year period when he was Assistant to Administrator O'Sullivan. For the benefit of the Court, I can state that the employees, including the Assistant to Mr. O'Sullivan secretaries, computor operators, bookkeepers and clerks, were all employed by the Fund upon the recommendation from Mr. O'Sullivan and/or Mr. Salcito as a result of referral by an employment agency or by a mode of selectivity

on interviews that was altogether neutral insofar as their duties were concerned. Mr. O'Sullivan, of course, had worked at the trade and naturally became a member of Local 15. To satisfy the demands and clamour of certain segments of the membership of Local 14, 14B, some action had to be taken.

6. The action that had to be taken had its onset in the letter dated May 31, 1974 which was addressed to me as Union Trustee, President and Business Manager of Local 15, a copy of which was sent to William J. Corcoran, Esq.of Corcoran and Brady, as Counsel for the Joint Welfare and Pension Funds. This letter which was sent by Mr. Thomas J. Nolan, Business Manager and Union Trustee is attached to this affidavit and marked Exhibit "A". The letter under separate categories reiterates these contentions and requests authority to invite Messrs. Rizzuto and Finn and Mr. O'Hara, Attorney for Local 14, to be in attendance at the next meeting to be held on June 11, 1974.

7. In the concluding paragraph of his letter dated May 31, 1974 Mr. Nolan gives his ultimatum in which he states and I quote:

> "* * * I will take all legal means at my disposal to effect a satisfactory solution to these problems, even to the possibility of a division of the Funds into separate Funds for each local union."

This is the action that the administration of Local 14 demanded to satisfy the clamour raised by Mr. Nolan a few months prior to the contemplated election to be held by Local 14 in the early Fall of 1974.

8. In reply to this letter, I wrote to Mr. Nolan under date of June 3, 1974 and informed him that Local 15 would raise no objection if he chooses to bring about such a "division". Furthermore, the request that Mr. Nolan made to have Messrs. Rizzuto and Finn and Mr. O'Hara, the Attorney for Local 14 in attendance was readily agreed to by myself. The letter dated 5/31/74 is attached hereto and marked Exhibit "B".

9. For the information of the Court, Messrs. Rizzuto and Finn were rank and file members of Local 14 and upon the approval of Business Manager Nolan had sought authority to investigate the books and records of contributing employers upon the claimed assertion that certain large construction contractors were delinquent in making contributions to the Benefit Funds, on the 5% basis of the gross wages of their employees as required under the Collective Bargaining Agreements with the Employers. Messrs. Rizzuto and Finn presented a letter approved by Mr. Nolan to the Trustees to have said letter executed granting authority to these two rank and file members, who have no background in accounting or

actuarial work, to investigate the rumor that five big contractors were not paying into the Fund and that certain large sums of money were missing from the Funds.

In view of the fact that the Funds were equipped with a firm of Public Certified Accountants, a nationally recognized Actuarial Firm and by the firm of attorneys that had represented the Trustees since the inception of the Funds in 1950, I saw no need or warrant to authorize two rank and file members of the Union to investigate alleged shortages of contributions. I believe such inquiries should be handled by professionals, such as accountants, lawyers and actuaries who carry with them professional responsibilities. Rank and file laymen do not possess these responsibilities.

10. Of course, these unfounded and contrived allegations that large sums of money were missing came to the attention of the New York State Insurance Department in the course of their regular routine audits of the Funds and at a subsequent meeting of the Trustees, two representatives of the Insurance Department were in attendance and inquired of Mr. Rizzuto as to the basis of the claim that the sum of Ten MillionDollars was missing. This Court should be informed that in the meanwhile, Mr. Rizzuto had run for the office of President of Local 14 and in a very spirited contested election during which these charges were battered back and forth, Mr. Rizzuto was elected. In answer to the inquiry made

by the Examiners from the New York State Insurance Department as to the basis of the charge that moneys were missing from the Welfare and Pension Funds, Mr. Rizzuto replied that "this was political strategy". Reference to this meeting of the Board of Trustees is contained in the Minutes dated October 30, 1974 attached hereto and marked Exhibit "C".

11. On numerous occasions following the onset of the letter of Mr. Nolan dated May 31, 1974 in which he threatens to take legal means to bring about a division of the Funds into separate Funds for each Local Union, Mr. Nolan has repeatedly sought to recall his letter, which request was repeatedly denied by me and the remaining Employer Trustees.

12. The petition to this Court, I understand was served on each of the Trustees and on the General Contractors Association, Inc. at 60 East 42nd Street, New York City, which organization represents certain employer association and individual contractors in the heavy construction business. The General Contractors Association and the Employer Trustee of this organization, Mr. George Robke, have appeared in this proceeding by the law firm of Shea, Gould, Climenko & Kramer, Esqs., 330 Madison Avenue, New York, N. Y. , by Peter Stergious, Esq. Of Counsel. Copies of the petition were also served on The Building Trades Employers Association of 711 Third Avenue, New York City acting on behalf of certain designated employer

associations and individual contractors who have collective bargaining agreements with Local Union 14 14B and Local Union 15, 15A, 15C, 15D, International Union of Operating Engineers. The Building Trades Employer Association, acting for the particular employer associations and individual contractors who are in collective bargaining agreements with Locals 14 and 15 have appeared through their Counsel, Cunningham & Kaming, Esqs. of 757 Third Avenue, New York, N. Y. Some of the employer associations allied with the B.T.E.A. are the Cement Riggers Association and the Plasterers Employers Association, New York Riggers and Erectors Association.

13. On June 11, 1974 prior to the filing of the Petition, it was unanimously agreed among all four Trustees that the Joint Welfare and Joint Pension Funds were to be split as suggested by Mr. Nolan in his letter of May 31, 1974. A Special Meeting of the Trustees was held at the Engineers Club, 32 West 40th Street, New York City. Present at this meeting were all four Trustees, alternate Trustee John T. Murphy of Local 15 and Mr. Theodore King, alternate Employer Trustee. Also present were Fund Administrator Joseph J. Salcito and newly designated co-Administrator, Nicholas Lore. Mr. Messinger, Business representative of Local 14 and Richard O'Hara, Esq., Attorney for Local 14; Messrs. Joseph Rizzuto and Jerry Finn, lay members of Local 14 and Messrs. Nicholas Laccecti and Philip B. Polak of the actuarial firm of Martin Segal & Company representing

Local 14 and Mr. William C. Finnernan, Jr., General Manager of the General Contractors Association and William J. Corcoran, Esq. of the firm of Corcoran and Brady, Attorneys for the Board of Trustees.

14. Employer Trustee, Alfred Gerosa, who is Chairman of the Board of Trustees on calling the meeting to order, requested acknowledgment of the letter of Union Trustee Thomas Nolan and the responses to this letter by Employer Trustees Gerosa and Finnernan. The minutes of the Special Meeting of June 11, 1974, a copy of which is attached and marked Exhibit "D" indicates that Union Trustee representing Local 14 called for an immediate splitting of the funds "as soon as possible". At this June 11, 1974 meeting, the Trustees made provision for the appointment of special counsel for employer Trustees.

15. At the meeting of the Trustees on January 3, 1974 held at the offices of the General Contractors Association, 60 East 42nd Street, New York City, Union Trustee Nolan representing Local 14 informed the Trustees that Local 14 had engaged the actuarial firm of Martin Segal & Company to review the status of the Funds and that the reason Martin Segal & Company was engaged was to show the inequities which the membership of Local 14 was claiming. Mr. Nolan read from a copy of a letter he sent to his membership in which he informed it that he would present to the Trustees a demand for reforms recommended by the Local 14

Pension and Welfare Committee. In the letter, Mr. Nolan reiterates that "these reforms would be especially beneficial to Local 14 members since most of us feel that there are certain inequities in the current plan".

I, as Union Trustee, representing Local 15 advised the Trustees that I could not go along with Mr. Nolan and could not draw any conclusions until Local 15 had engaged its own Actuary like Local 14 did when it engaged Martin Segal & Company. It was at this meeting that Mr. Nolan made a motion that a member of Local 14 be appointed as Co-Administrator and this was done, to satisfy the demand of Local 14 that it was not represented in the office of the administration of the funds. Mr. Nolan further contended that Segal & Company was not receiving cooperation from the Joint Welfare and Pension offices. A copy of the Minutes of January 3, 1974 is attached hereto and marked Exhibit "E".

16. The meeting of the Trustees of June 11, 1974 shows an unwillingness on the part of the Trustees to agree upon an umpire, for in that meeting the minutes reflect the intention to "split" the funds and after much discussion on the splitting of the funds, the course of action that would be followed would be to serve all the members without prejudice and to protect the Trustees and to allocate the funds by submitting the matter under the impasse provisions of the Funds and the law to the United States District Court. As heretofore related, the

Trustees in contemplation of submitting the matter to the District Court agreed upon the selection of Attorneys for the Employer Trustees, setting the limits of the legal fees. The Minutes also reflect their intention to have insurance to "Hold Harmless" all Trustees in the course of the proceedings to be presented to the Court. This motion was made by Employer Trustee Robke and passed unanimously. These acts and minutes clearly demonstrate an "impasse" and the unwillingness of the Trustees to have any umpire, other than one appointed by the Court in the form of a Special Master, which is what the Petition seeks.

17. It was my understanding that the Employer Trustees, under any circumstances insisted that the separation be accomplished by the Court. Further evidence of the existence of an "impasse" is the demand made by Union Trustee Nolan representing Local 14 that it be given 50% of the corpus of the Welfare and Pension Funds estates. I offered 20% which was not accepted. Although Mr. Nolan now claims that he was only "jesting", I wish to inform this Court that I was serious. Based on the reports given to me by the actuarial firm of Harold Faggen Associates wherein his study indicates that the aggregate of moneys contributed on behalf of the membership of Local 15, 15A, 15C and 15D is many times greater than that contributed on behalf of Local 14 members for the reason that the membership of Local 15 and its branches covered by the Funds is about 4 times the

membership of Local 14 and with equal pay for the members of the respective local unions in many instances. This certainly shows a clear impasse to which the representatives of Local 14 and Local 15 acting as Trustees could not agree.

18. At the meeting of the Trustees on July 18, 1974, Employer Trustee Robke informed the Trustees that the members of the General Contractors Association under collective bargaining agreements with Local 14 and Local 15 approved the "splitting" of the Funds at a meeting it held on May 29, 1974. Similarly, the membership of Local 15 voted to have the Joint Funds separate and operate as separate distinct entities.

19. At the meeting of the Trustees held on July 18, 1974 Richard O'Hara, Esq informed the Trustees that he had been engaged by Local 14 to represent its interest in Court and Mr. O'Hara further suggested that the Court be given copies of the Minutes. Although Mr. Nolan sought to have his letter of June 11, 1974 tabled, I objected and said the letter had been answered by me, wherein I stated Local 15 had no objection to the splitting of the Funds as suggested by Mr. Nolan. Nevertheless, Mr. Nolan moved that the minutes of the prior meeting of June 11, 1974 be accepted and the motion was carried, which in effect reiterated Mr. Nolan's request to have the Funds "split".

THE POSITION OF LOCAL 14 AS TO THE SPLITTING OF FUNDS

20. In the minutes of the Trustees dated October 30, 1974, Mr. O'Hara informed the Trustees that on behalf of Local 14 he would request the petition for the splitting and separation of the Funds be dismissed when counsel appears before the Court on November 1, 1974 for the reason that the separation of the Funds should be done through the Pension Reform Act of 1974 which was signed by President Ford on September 2, 1974 and not through the Taft-Hartley Law. In the ensuing discussion, Employer Gerosa acting as Chairman of the Board of Trustees stated that his opinion was that the Pension Reform Act was signed and enacted after the petition was filed and the proceeding begun and suggests that the Trustees follow the current action in the Federal Court. Mr. Gerosa, Employer Trustee and Chairman of the Board of Trustees, by this statement, reiterated his view that the separation is to be done through the aid of the Court. The Attorney for the Trustees, William J. Corcoran, registered his objections to Mr. O'Hara's views by stating that the Petition was filed in July 1974 following the dispute between the trustees representing Local 14 and Local 15 and before the enactment of the Pension Reform Law of 1974. Further, the Trustees wish to be protected in their actions of separating the Funds, because of the dispute and disagreement of each local union as to the share

each was entitled to; that the employer trustees and myself from the very beginning were unwilling to agree upon any unpire and hence, would be fruitless to seek one when the two employer trustees and myself declined to select anyone for the position of umpire other than one selected by the Court. Perhaps some of the concern was based in part on fear of repercussions in the form of lawsuits should disenchanted participants claim that the allotment to either Local 14 or Local 15 was inequitable and Mr. Gerosa, employer Trustee, made this clear in his statement that the Funds would not be split if any of the participants would be hurt. Mr. Gerosa was also informed at the November 8, 1974 meeting of the Trustees that the membership of both Local Unions 14 and 15 had approved of the action of separating the Funds.

21. At this meeting of November 8, 1974, Employer Trustee Robke stated that in his opinion an impasse exists and that the Employer Trustees want to go to Court and that the Trustee for Local 14 does not wish to have the Court resolve the disputes. In the dialogue which continued at this meeting Chairman Gerosa stated that the Local Unions can agree but that he will not agree to anything less than the Court's deciding the issue. Mr. Robke, employer Trustee representing the members of the General Contractors Association concurred with Mr. Gerosa.

A copy of the Minutes of November 8, 1974 is attached hereto and marked Exhibit "F". In this Exhibit "F" Mr. Gerosa makes it clear that if the Local Union Trustees agree it does not mean that the Employer Trustees will agree. What Mr. Gerosa is saying for himself and Mr. Robke, the other employer Trustee, is that he and Mr. Robke want the Court to appoint a Special Master and that he and Mr. Robke would never agree to any umpire.

22. We all understood the concern of the Employer Trustees who are representatives of practically the entire employer section in the Construction Industry with whom Local Unions 14 and Local 15 deal. Mr. Gerosa as the head of a construction company often stated his position, viz: that as a Trustee he did not wish to involve himself with a responsibility of selecting an umpire whose actions might be subject to question and thereby bring about criticism and possible legal problems to himself individually. Both Mr. Gerosa and Mr. Robke's views were similar to my own, namely: have the Court designate a person competent to handle this matter involving as it does, over Thirty Million Dollars in the Pension Fund and about Six Million Dollars in the Welfare Fund. Numerous questions of law, equity and the actuarial science would come into being and it was and is my feeling, which I believe Messrs. Gerosa and Robke shared with me, that the selection of such a person competent in these fields could not be done by laymen as we Trustees are.

23. Insofar as the existence of an impasse, which Mr. O'Hara, Attorney for Local 14 and its Trustee, Thomas Nolan, denies, a reading of the Minutes of November 8, 1974 (8th paragraph from bottom) shows that Mr. Gerosa remarked that the memorandum of Segal & Company of October 31, 1974 "creates an impasse with the many issues it raises". In addition, Mr. Robke, Employer Trustee, is quoted as saying that the "employers" (meaning employer trustees) feel they have an impasse in that they wish to go to Court and Local 14 does not. (Third paragraph from top, page 2).

Mr. Gerosa again expresses his view that he does not believe the Local Unions (Trustees) can agree and will not agree to anything less than the Court deciding the issue (Paragraphs 6 and 7 from top of page 2).

In further discussion as to the "impasse", Employer Trustee Robke at page 2 of the November 8, 1974 minutes, repeated the demand of Mr. Nolan for 50% of the allocation of funds and that Mr. Maguire offered 20% and concluded that this represents an impasse. Mr. Robke made a motion to the effect t hat this constitutes an "impasse" and the Trustees voted 3 to 1 that an impasse existed, with Mr. Nolan voting "no".

24. For the Court's information, a regular meeting of the Trustees of the Joint Welfare and Joint Pension Funds was held on January 2, 1975 which constitutes the first

meeting of the year. In addition to the Four Trustees there were present the following: the two co-administrators, Messrs. Salcito and Lore; Mr. Joseph Rizzuto, President of Local 14 and the three attorneys, Mr. Kennedy representing Local 14 and Mr. Nolan; Mr. Stergios of the firm of Shea, Gould, Climenko & Kramer, Esqs., George Robke and William J. Corcoran of Corcoran and Brady, representing the Board of Trustees. At this meeting there was talk about the alleged $10,000,000 which was rumored to be missing. Mr. Rizzuto denied that he said the moneys were missing and stated that the printout failed to show the allocation of these moneys to particular participants, although discussion among the Trustees reaffirmed the alleged contention made at prior meetings that there was a discrepancy between $82,000,000 and $71,000,000 in wages, although in finality it was agreed that actually no moneys were missing. The feeling of Local 14's actuary is that the moneys should have relfected the moneys contributed by the wages of members of Local 14 despite the fact that the Administrator, Joseph Salcito, on prior occasions has explained that inasmuch as the Funds were "Joint" there was no need to show what portion was allocated to Local 14 and what portion was allocated to Local 15. Nevertheless, Union Trustee Nolan repeated his charge that the figures given to Mr. Maresco of Segal & Company were not satisfactory and suggested a meeting between Mr. Maresco and Mr. Tabor, the Funds'

actuary, repeating the charge of Segal & Company that hundreds of cards are missing. This was e[illegible]oed by Mr. Nicholas Lore, Co-Administrator selected by Local 14.

25. Mr. Kennedy, Attorney for Local 14 and its Trustee, Thomas Nolan, raised legal objections to the petition and Mr. Gerosa, Employer Trustee, replied that "we can't resolve it and we are not capable of resolving it" and we have to have a court of law (come to an agreement as to how it is to be done).

26. The question of an umpire was again raised by Attorney Kennedy and Mr. Stergious, Attorney for Mr. Robke and the General Contractors Association said his client would not and could not agree upon any umpire and hence, there was no need to go through the motions of designating one to be voted upon. The discussion reached a point of absurdity where the futility of going through a motion for appointing an impartial umpire occurred when Mr. Nolan suggested that his uncle, Dick Nolan, be appointed an impartial umpire which the Trustees did not take seriously, knowing that he was jesting. I countered by suggesting my wife.

Finally, a formal motion was placed on the agenda again to appoint an impartial umpire and the vote of the Trustees were 3 against and 1 for, the sole dissent being Mr. Nolan. This action reaffirmed what the employer trustees and myself have been saying all along, even before the Petition was filed that only

a Court appointed Special Master would be acceptable. References to the prior meetings of October 30, 1974 and November 8, 1974 and the comments that appear in these Minutes, were made. In answer to Mr. Gerosa and Mr. Stergious who asked Mr. Nolan if he wishes to comment on the October 30, 1974 meeting, inasmuch as Mr. Nolan was not present, being represented by Mr. Rizzuto, President of Local 14 and Mr. O'Hara, Attorney for Local 14, Mr. Nolan declined to comment, despite the fact that at this meeting Mr. O'Hara said he could not answer for Mr. Nolan as to certain matters that were brought up for discussion.

27. Naturally, as I am not a Lawyer, I would prefer to have the attorneys for the Board of Trustees answer that portion of the motion made by Local 14's attorneys as to the law involved. However, it does seem to me that when the case was started in this Court, the only law that in my opinion applied was the Taft-Hartley Law. The new Pension Reform Act of 1974 had not been enacted. In any event, the new Pension Reform Act of 1974 does not replace that portion of the Taft-Hartley Law with respect to an impasse and the selection of an impartial umpire. That seems to me to continue, despite the new Pension Reform Law. Further, I am informed by Counsel that the provisions of the new Pension Reform Act do not apply to multi-employer Funds until January 1, 1978.* The number of employers of the members of Local 14 and Local 15 and its branches, which are embraced within the Joint Welfare and Pension Funds are several thousand. Some employ participants for weeks and months and some like the Water Tunnel job and the big North River anti-pollution job netween West 135th Street and West 145th Street and the Hudson River, employment lasts several years. It is my opinion that

*Effective date for terminations is January 1, 1978. However, the effective date for separation of Funds is January 1, 1976 (See section 211 (b)(1)).

between the members of the various employer association included in the General Contractors Association and the Building Trades Association and independent contractors, the number of employers are in the vicinity of 1,000 or more.

28. Although reference in the affidavit of Mr. Nolan refers to "termination" of the funds, actually what is intended insofar as Local 15 and I believe Local 14, is that the"Joint Funds"are to be separated. Mr. Nolan makes this clear in his letter of May 31, 1974 to me in which he complains of certain matters and then concludes: "and I will take all legal means at my disposal to effect a satisfactory solution to these problems, even to the possibility of a division of the Funds into separate Funds for each local union". (Exhibit "A")

29. Mr. Nolan, of course, picks on the word "terminate" which is used by the writer of these minutes, namely Mr. Joseph Salcito, Admittedly, Mr. Salcito used the word "terminate" but as he explained, he used it interchangeably in other minutes with "separation".

Mr. Salcito explained at the January 2, 1975 meeting that as a layman, he did not intend the legal significance of "termination" which the attorney for Local 14 refers to in the affidavit of Mr. Nolan. I understand that the attorneys for Local 14 have advanced the idea that with the word "termination" which I understand appears in the language of the

Pension Reform Act of 1974, that this Act and not the Taft-Hartley Act applies. But, Mr. Nolan in his letter of May 31, 1974 belies this interpretation as he wants the Funds "even to the possibility of a division of the Funds into separate Funds for each local union."

30. Neither I, nor the employer Trustees believe Mr. Nolan intends to terminate the Funds and bring about a dissolution with the moneys to be distributed to the participants. What all of us desire, and I am speaking, I believe, for myself and the Employer Trustees is a division of the Joint Funds into four separate Funds, namely:

1. a Welfare Fund for Local 14;
2. a Pension Fund for Local 14;
3. a Welfare Fund for Local 15;
4. a Pension Fund for Local 15.

30A. Mr. Nolan takes issue with the statement in the Petition and the position of Local 15 that Local 15 is "carrying" Local 14 by contributing a substantially larger amount on the wages of its members than Local 14 on the basis alone that Local 15 and its Branches outnumber Local 14, 14B, four to one or better. Mr. Nolan further states (page 4) that on the average, Local 14 members earn significantly more than members of Local 15. This is not correct. In the few cases where operators of long boom cranes receive a premium over the average boom crane, I wish to

inform this Court that long-boom cranes have to a large extent been replaced by tower cranes. The maintenance men of Local 15 and 15A receive a greater hourly wage than the members of Local 14 working on compressors, pumps and the like. In a great number of instances, members of Local 15 working on the Cherry-picker type crane receive a salary comparable to those of Local 14. These differences of opinion alone, demonstrate that an "impasse" exists between the two local unions and fortifies the position of Local 15 of the existence of an impasse. Further, the members of Local 15 in many instances have the same type of license as members of Local 14 and can operate a large crane or hoist when called upon to do so. Nevertheless, in all these instances, the moneys earned by members of Local 15 are the bases on which the 5% contributions are paid into the Joint Funds by the Employer.

31. The differences between the earnings and contributions to the Benefit Funds have been brewing for some time by a small group of Local 14 members who are employed on long-boom cranes and who admittedly earn a premium wage over that of Local 15 members and it is this small group who are demanding a multi-level pension, to reflect their higher wages and contributions. However, they forget that their number is few, whereas, the gross aggregate sum of contributions is far greater than that contributed to the joint funds on the basis of the

greater members, as I have said of better than 4 to 1, I have said repeatedly at my general meetings of the Branches of Local Union 15, 15A, 15C, and 15D that I have too many friends and former members of Local 15 in Local 14 and I would not want them hurt, financially or pension-wise, in any way, and that is the reason I am opposed to an umpire selected by the Trustees for what I want to know in my heart and mind that these men, when the time comes for them to retire, will receive their right and correct pension benefit, on the basis of a proper allotment of their credits in the Funds.

32. I hesitate to give this responsibility over to any person or agency, less in authority and integrity than our Federal Court. In this respect, I believe the Employer Trustees concur.

WHEREFORE, I respectfully request this Honorable Court to dismiss the Motion filed on behalf of Mr. Nolan and Local 14, 14B, International Union of Operating Engineers, to dismiss the Petition on the ground that this Court lacks jurisdiction.

Thomas A. Maguire
THOMAS A. MAGUIRE

Sworn to before me this
14th day of January 1975

William J. Corcoran
Notary Public

WILLIAM J. CORCORAN
Notary Public, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION

TO: SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee Robke
330 Madison Avenue
New York, N.Y. 10017

CUNNINGHAM & KAMIN, ESQS.
Attys. for Trustee Gerosa
800 Third Avenue
New York, N.Y. 10022

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attys. for Local Unions 14 and 14B, AFL-CIO
and THOMAS J. NOLAN, as Trustee of the
Joint Welfare Fund and the Joint Pension
Fund, International Union Of Operating
Engineers
1461 Franklin Avenue
Garden City, N.Y. 11530

EXHIBIT A, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE.

International Union of Operating Engineers

AFFILIATED WITH THE A.F.L.-C.I.O.

THOMAS J. NOLAN
Business Manager
Financial Secretary

RALPH DALTON
President

FRED L. CARON
Vice-President

JOHN R. EGAN
Rec.-Corr. Sec'y

GEORGE F. PUGH
Treasurer

Office of

LOCAL UNION 14 & 14-B

141-57 NORTHERN BOULEVARD, FLUSHING, N.Y. 11354

Phone 939-0600

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BUSINESS REPRESENTATIVES

WILLIAM D. WADE
EDWARD BRODERICK
JOHN J. MESSINGER
EDWARD P. MURPHY
HENRY J. WALKER

May 31st, 1974

Mr. Thomas A. Maguire, Bus. Mgr., Union Trustee
Joint Welfare and Pension Funds
Locals #14 - 15, International Union of
Operating Engineers
265 West 14th Street
New York, New York 10011

Dear Sir:

I am writing this letter to request that the following matters be placed on the agenda of the Trustees' meeting of June 11th, 1974, and that action be taken on them.

(1) The failure or refusal of the Trustees to adopt effective remedial action on problems I have raised as to administration of this Fund for over 18 months, to wit;

(A) The failure or refusal of Fund Office employees to provide access to records to the Co-Administrator, and a general lack of cooperation in his efforts to function on Fund matters.

(B) The failure or refusal of the Trustees to effectuate a sound administrative acturial and accounting systems, including but not limited to:

I. Lack of certification of income
II. Allocation of contributions to individual covered emoloyees.
III. Absence of basic records to certify entitlement to benefit or compute Fund liability.
IV. An effective auditing system.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

International Union of Operating Engineers
LOCAL UNION 14 & 14-B
141-57 NORTHERN BOULEVARD, FLUSHING, N.Y. 11354

THOMAS J. NOLAN, Business Manager

May 31st, 1974

TO: Mr. Thomas A. Maguire, Bus. Mgr., Union Trustee
Joint Welfare and Pension Funds
Locals #14 - 15, International Union of
Operating Engineers

(C) The failure or refusal by the Trustees to provide benefit in the Pension Fund having no acturial impact, but which would insure to the benefit of the covered employees, such as:

I. Survivor option.
II. Early retirement at acturial reduction of the normal pension.
III. Annual reports to covered employees on amount of contributions received on their behalf and credits received by them.

(2) I wish to invite Messrs. Rizzuto and Finn, and Mr. O'Hara, the attorney for Local Union #14, to be in attendance on June 11th, 1974.

I am writing this letter in advance of the meeting, so that each Trustee can come prepared to act on the motions I intend to make to implement these badly needed reforms. Failure to take appropriate effective action on these requests will be deemed by me to be a failure of the fiduciary duty of the Trustees, and I will take all legal means at my disposal to effect a satisfactory solution to these problems, even to the possibility of a division of the Funds into separate Funds for each local union. Any and all consequences of a failure or refusal to act at this time will be your responsibility.

Very truly yours,

Thomas J. Nolan

Thomas J. Nolan
Business Manager and
Union Trustee

TJN:mo

EXHIBIT B, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE.

June 3, 1974

Mr. Thomas J. Nolan, Bus. Mgr., Union Trustee
Joint Welfare and Pension Funds
Locals #14 - 15, International Union of
Operating Engineers
141-57 Northern Boulevard
Flushing, N.Y. 11354

Dear Sir:

I wish to acknowledge your letter of May 31, 1974. You indicate that a division of the Funds into separate Funds for each Local Union may be necessary to effect a satisfacotry solution to certain letters referred to therein.

On the basis of a survey conducted of the Joint Pension Fund by independent actuaries engaged by Local 15, I wish to inform you that Local 15 will raise no objection if you choose to bring about such a division. On the other hand, on behalf of Local 15, I have no objection to your invitation to certain persons, including the attorney for Local 14, to attend the next meeting of the Board of Trustees.

Very truly yours,

Thomas A. Maguire
President and Business Manager
Union Trustee

TAM:pb

bcc W. J. Corcoran

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE.

JOINT WELFARE FUND

Minutes of the meeting of the Board of Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Locals 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, held at the office of the Building Trades Employers Association, located at 711 Third Avenue, New York, New York on October 30, 1974.

Those present were Trustees Thomas A. Maguire, George E. Robke and Alfred T. Gerosa. Alternate Trustees John Murphy and Joseph Rizzuto, Administrators Joseph J. Salcito and Nicholas Lore. Also present were Attorney for the Fund William J. Corcoran, Attorney Edward J. Fee of B.T.E.A., Attorney Richard L. O'Hara of Local 14, Attorney Peter D. Stergios of C.C.A., Sol Tabor of Tolley International, Vincent Panettieri of Klein, Katcher & Schultheis, Nicholas Laccetti and Charles Maresca of Martin E. Segal Co., and Martin Levy and Richard Orlando of the New York State Insurance Department.

The meeting was called to order by Chairman Gerosa at 10:15 A.M.

The Administrator read a letter to the Trustees which was sent to the Fund office regarding a change in Alternate Trustee as follows:

I.U.O.E. Local 14 & 14B

October 28, 1974

Board of Trustees, Joint Welfare and Joint
Pension Funds, Local 14 & 15, I.U.O.E.
265 West 14th Street
New York, New York

Gentlemen:

This is to advise you that Mr. Joseph Rizzuto has been appointed as Alternate Trustee representing Local 14, Joint Welfare and Pension Funds, Locals 14-15 of the International Union of Operating Engineers.

Very truly yours,

signed--Joseph M. Rizzuto
Joseph M. Rizzuto
Pres.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Robke made a motion to accept the letter naming Joseph M. Rizzuto as Alternate Trustee. It was seconded by Trustee Maguire and passed.

Trustee Maguire explained to the Trustees that he had spoken with Ed Broderick, the Administrator of the Local 14 Vacation Fund regarding the auditors request to check the purchase of stamps made from their Fund. He further explained to Trustee Rizzuto that the purpose of this check was only to check the stamp purchase against the wages reported to the Welfare and Pension Funds, by the employers which the auditors are auditing.

Trustee Rizzuto approved the auditors request.

Attorney O'Hara advised the Trustees that Local 14 will suggest that the petition which was submitted to the District Court be dismissed when they appear on Friday, November 1, 1974. He stated that he felt it was not the proper vehicle and rather that the dissolution of the Funds should be done through the new Pension Reform Bill which was signed by the President on September 2, 1974 rather than under the Taft Hartley Bill.

Trustee Gerosa stated that his unofficial feeling was that the law was signed after the date of filing. Either may apply but suggests we follow current action.

Attorney Corcoran does not agree because of the following:

1. Petition was filed in July, 1974 following dispute of the handling of the Funds.
2. Division of opinions as to each share of the assets.
3. Taft Hartley states Trustees may bring suit and petition filed under Taft Hartley.
4. Feels we have filed properly as outlined under Taft Hartley and new Pension Reform Act. The Trustees would be Held Harmless after District Court hands down decision.

Attorney Stergios suggested that the Attorneys discuss the petition before November 1, 1974.

Trustee Gerosa said his position was that the Funds would not be split if any of the participants will be hurt.

Trustee Rizzuto asked if there was any evidence showing a reduction in benefits. Trustee Gerosa advised that there was none.

BEST COPY AVAILABLE

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Cerosa instructed the Attorneys to meet regarding the November 1st appearance at the District Court and report back to the Trustees after the meeting. He asked further if the membership of Local 14 and 15 had approved the separation of the Funds. Trustees Maguire and Rizzuto advised that they had.

Trustee Maguire stated that he thought it was already decided that the Funds were to be split and the manner determined.

Trustee Cerosa then asked Mr. Martin Levy, the New York State Insurance Examiner who is auditing the Fund, if there were any questions he wished to ask.

Mr. Levy asked Trustee Rizzuto for a copy of the report made for Local 14 by the Martin E. Segal Co.. Trustee Rizzuto advised that the only information compiled by Martin E. Segal was for the feasability of the separation of the Funds.

Mr. Levy stated that a letter from Martin E. Segal to Trustee Nolan signed by Mr. Maresca refers to a report made for Local 14.

Attorney O'Hara asked if there was any report other than the one mentioned by Trustee Rizzuto.

Mr. Maresca stated that the report was made for Local 14 only.

Mr. Levy said that a letter from Martin E. Segal says that at a meeting of Local 14 the contributions to the Funds did not reconcile.

Attorney O'Hara said that the report given at the meeting was an oral report.

Trustee Rizzuto stated that the allegation was made by the opposition who was running against the Business Manager and not by Segal.

Mr. Levy said that he was not satisfied with the reply and wanted to know where the figure came from. Mr. Maresca stated that the difference was in the wages posted to pension records as opposed to wages reported for the year.

Mr. Levy asked Trustee Maguire if he may have a copy of the report compiled for Local 15 by Mr. Faggen. Trustee Maguire replied that he could.

Trustees Cerosa and Robke suggested that the reports of the actuaries be submitted to the Trustees.

Attorney O'Hara advised that Local 14 has no report in reference to the Insurance Department's request.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Attorney Stergios suggested that the Funds records be checked regarding the allocation of wages. Trustee Gerosa stated that after the actuaries reports have been submitted the Trustees can determine what steps must be taken.

Attorney Corcoran stated that it was important that Martin E. Segal's charge of inaccuracies be cleared before appearing in court.

Trustee Gerosa thought that perhaps an independent auditor should be hired to check and review procedures used by the Funds and see if they can be updated.

Mr. Levy then referred to a letter dated June 5, 1974 signed by Trustees Gerosa and Robke which was in answer to Trustee Nolan's letter. He referred to the portion of the letter which replies to the charge made by Trustee Rizzuto and Gerald Finn that they knew of five employers who were not making the proper contributions to the Welfare and Pension Funds.

Trustee Rizzuto stated that Finn and he did not state that millions were missing.

Trustee Gerosa read Trustee Nolan's letter of May 30, 1974. The letter referred to by Mr. Levy is from the Employer Trustees in answer to Trustee Nolan's letter.

Attorney O'Hara asked Trustee Rizzuto if he stated that monies were missing.

Trustee Rizzuto explained that the potential existed that money was not reported based on the participants in the Fund.

Mr. Levy asked Trustee Rizzuto who the five employers are that failed to make the proper contributions to the Fund.

Trustee Rizzuto explained that there were no employers and it was used as political strategy.

Trustee Maguire advised that at the time he inquired as to who they were and they were given permission to go to the Funds office and check the report forms filed with the Welfare and Pension Funds.

Attorney Corcoran advised that the Funds should have the names of the five employers in order to commence action.

Mr. Orlando asked if the Funds were going to split without an actuarial evaluation.

At this point in the meeting there was a lengthy discussion regarding the number of participants in the Plan.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Robke made a motion that the actuary meet with the Administrators and make a report regarding the number of participants followed with a report to the Trustees. The motion was seconded by Trustee Maguire and passed.

Attorney Corcoran advised that the actuarial report referred to is the report filed by Tolley International for the year of 1972.

At this point in the meeting the Insurance Department Examiner left and the Financial Representatives of L. F. Rothschild, Shields & Company and the National Bank of North America were admitted.

Mr. Kampel of L. F. Rothschild reviewed their portion of the portfolio with the Trustees and noted that the equity number of issues was reduced by 20% and the bond portion was increased. He made the following recommendations to the Trustees:

Buy 200 shares Gen'l. Elec.
Buy 500 shares Sedco

Trustee Gerosa advised Mr. Kampel that the Trustees will discuss their recommendations and he will be advised of the Trustees action.

Mr. Dunseith of Shields Model Roland discussed their portion of the portfolio with the Trustees and advised there were no recommendations to be made for the Welfare Fund.

The Representatives of L. F. Rothschild and Shields Model Roland were then excused from the meeting.

Mr. Mooney of the National Bank of North America together with the Trustees then reviewed the entire portfolio.

Mr. Mooney advised the Trustees that the Funds position in the stock market is not any different from Funds of the same size. He stated further that the Trustees should consider the common stock ratio they wish to hold. He feels it should be at least 40% . Buying into common stock should be done at the point in which they feel the market is turning around.

Trustee Gerosa noted that the Trustees spent several hours with the Representatives of A. G. Beckert at the time they completed their survey of the Fund and Beckert advised at that time that the Fund was conservatively invested. He did not think the Fund should invest in common stock at this time.

Trustee Maguire stated that he will not approve the purchase of common stock. He feels that the Fund should invest in U. S. Bonds and Notes.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Maguire asked what rate U. S. Treas. were paying and Mr. Mooney advised they are yielding about 8%.

Mr. Mooney advised that the portfolio investment was in line with the investment policy of the National Bank of North America.

The Trustees then discussed the recommendations submitted by L. F. Rothschild and decided that they did not wish to invest in common stocks at this time and that they were to submit new recommendations.

The Trustees approved a request made by letter dated 9/23/74 from Frendel, Brown & Weissman requesting an increase in their fee for auditing employers payrolls. The increase asked was from $9.50 per hour to $12.00 per hour. The increase was approved retroactive to 10/1/74. The Trustees noted that approximately $135,000 was found to be owed after audits and that the accounts fees during this time were approximately $9,500.00.

Trustee Maguire requested that he receive a copy of the auditors letter after completion of each employer audit.

The Trustees reaffirmed their telephone approval of Shields Model Roland's sale recommendations of 800 shares Zapata, 1500 shares Crane Co., 2,477 shares Airco and 200 shares Zerox.

The Trustees also reaffirmed their telephone approval of expenses for the Co-Administrators to attend the New York State Conference of Engineers and the North Eastern States Conference at Lancaster, Pa. They also affirmed their previous telephone approval of one office employee to attend I.B.M. school.

The Trustees then continued their discussion regarding the separation of the Funds.

Trustee Rizzuto stated that the Funds should bear the cost of reconciling the Funds. Trustee Maguire stated that he does not agree that Funds should pay.

Attorney Corcoran explained that the court will decide the disposition of the Funds. They will use the actuaries report as part of their decision on net worth of the Funds. The cost of actuary should not be paid by the Fund.

Attorney O'Hara stated that if the Trustees want the Actuary to work on records the Fund should pay the fee involved.

Trustee Gerosa stated that the Fund will cooperate with the actuary but will not bear any cost.

Trustee Rizzuto made a motion that Martin Segal Co. and other actuaries be paid to implement the necessary work to straighten out the administration which has led to inaccuracies called to the attention of the Trustees today.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

There was no second to the motion.

Trustee Rizzuto asked if the Welfare Fund was in the black for 1974.

Mr. Panettieri, representative from the Funds' accountants, telephoned his office and advised that the Fund was $74,000 in the black as of 9/30/74.

Trustee Robke made a motion that Trustee Nolan's letter should be dispensed with at this time.

Attorney O'Hara advised he will not disucss Trustee Nolan's letter at this time in his absence.

The Trustees were discussing Trustee Thomas J. Nolan's letter of May 31, 1974. Section (1) (A) "The failure or refusal of Fund office employees to provide access to records to the Co-Administrator, and a general lack of cooperation in his efforts to function on Fund matters." Trustee Gerosa asked Mr. Lore on what he based his charge of non-cooperation. Mr. Lore stated that he suggested several changes in the IBM system which were not instituted because it had been decided to split the Funds. Trustee Gerosa asked for specific instances. Mr. Lore said that the system is keyed to a member's Social Security Number and he had found errors in the input to the system. Errors in the Social Security Numbers, errors in keypunching the Social Security Numbers, and these were not verified, so there was no safeguard against wrong Social Security Numbers. Last names were not being keypunched in full, only to five spaces. This was corrected. He also had asked that the Social Security Number be placed on the Medical Form submitted by the member. Mr. Salcito replied that Welfare and Pension has a certificate number that is put on medical records rather than the Social Security Number. Trustee Maguire said that we often receive wrong Social Security Numbers from members, or some members have two numbers. Mr. Lore also wanted to institute a reporting program for each member to receive a statement of his earnings.

Mr. Lore said that Mr. Salcito said that no changes would be made until the decision was made about splitting the Funds. After the split was decided upon, Mr. Lore asked to have the changes made and was told that Local 15 did not want to change, and Local 14 could do what they wished. Mr. Lore felt that this amounted to a lack of cooperation.

Mr. Lore said that another suggestion was to tie in contributions to earnings via the IBM. Trustee Gerosa said that earnings records were very hard to get. Mr. Lore said that he wanted to prevent mistakes from going into the IBM system. Attorney Corcoran asked if Mr. Lore had made any written records of these.

Attorney Corcoran asked if the allocation of contributions to earnings was for the purpose of determining what each member is earning. He was told it is to determine a member's eligibility.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Mr. Maresca and Mr. Lore said that there was a discrepancy of $10 million between the figures of Tolley Assoc. and the Martin E. Segal Co. This $10 million was found to be in unallocated funds, which they discovered and allocated properly.

Attorney Corcoran asked if Trustee Nolan had ever reported these charges to the Trustees. The Trustees told him he had not, in fact, he had asked that his letter be withdrawn; but, upon informing him that this was not possible, he had asked that it be tabled.

Trustee Gerosa requested that the Fund accountant meet with Mr. Salcito and Mr. Lore to determine if any of the suggestions made by Mr. Lore should be implemented, and report back to the Trustees. Trustee Robke seconded the motion, which was passed unanimously. Trustee Gerosa asked for any other specific recommendations. Attorney O'Hara suggested that Mr. Lore write down what his specific recommendations are.

With regard to the charge of lack of certification of eligibility, Trustee Nolan was not able to be present and Attorney O'Hara did not feel he could answer for Trustee Nolan.

Trustee Rizzuto stated that he would like to have a positive method of collection, and would like to check it against the Stamp Funds. He was informed that this would not be valid because of premium time paid in the Stamp Funds that was not paid in the Welfare and Pension Funds. Trustee Gerosa mentioned that during the last negotiations the employers had wanted a duplicate check, which would have made a valid reporting system, but was turned down by the unions.

Mr. Lore was asked if he could determine from his discussion with Martin E. Segal Co. if the unallocated funds were mostly in Local 15 or Local 14. He replied that it is believed the unallocated funds would be mostly in Local 15. The Local Union is not recorded on the card he stated. Mr. Salcito replied that it was not recorded because it was not necessary until the Funds split.

Trustee Gerosa stated he did not believe past Administrators erred when they did not put the Local number on the card. Mr. Salcito stated that now Local 14 is marked on the card, and those without notation are members of Local 15.

Trustee Rizzuto asked Mr. Salcito how he knew that the reports from the employer and the member were correct. Mr. Salcito replied that there is no way to do so except by an audit of the employers books. Trustee Rizzuto stated he would like a system that would prevent both the employer and the member from submitting false information. Attorney Corcoran stated that none of these problems were ever brought up at previous meetings.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Gerosa suggested that a copy of what was said today be supplied to Trustee Nolan and ask him if he has any further comments.

Attorney Corcoran stated that the suit for dissolution of the Funds is based upon an argument between the Local Unions regarding the division of funds. Attorney O'Hara asked if it had been stated how much each Local wanted, and was told that this had never been reported at a meeting. Attorney O'Hara said that at the hearing on Friday, November 1, 1974, he was going to vigorously oppose the processing of the petition in the Federal Court.

Trustee Gerosa moved that each Trustee be authorized up to $25,000 to secure counsel to represent them in the dissolution of the Funds, and that such monies be paid by the Joint Welfare and Pension Funds. Trustee Maguire seconded the motion. It was agreed that an alternate Trustee is to be considered as represented by the counsel for the Trustee for whom he is the alternate. The motion was passed unanimously.

The Administrator advised the Trustees that I.U.O.E. Local 37 from Baltimore, Md. has forwarded a request asking for reciprocity with the Joint Welfare Fund. The Trustees discussed the request and decided not to enter into reciprocity with Local 37.

Trustee Robke made a motion to accept the Minutes of the meeting held on July 18, 1974. It was seconded by Trustee Maguire and passed.

Trustee Maguire made a motion to accept the Administrators Report and approve the exempt list. It was seconded by Trustee Rizzuto and passed.

There being no further business, the meeting adjourned and the next meeting was scheduled for January 2, 1975 at the General Contractors Association office.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

JOINT PENSION FUND

Minutes of the meeting of the Board of Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Locals 14,14B,15,15A,15C,15D AFL-CIO, held at the office of the Building Trades Employers Association, located at 711 Third Avenue, New York, New York on October 30, 1974.

Those present were Trustees Thomas A. Maguire, George E. Robke and Alfred B. Gerosa. Alternate Trustees John Murphy and Joseph Rizzuto. Administrators Joseph J. Salcito and Nicholas Lore. Also present were Attorney for the Fund William J. Corcoran, Attorney Edward J. Fee of B.T.E.A., Attorney Richard L. O'Hara of Local 14, Attorney Peter D. Stergios of B.C.A., Sol Tabor of Tolley International, Vincent Panettieri of Klein, Katcher & Schultheis, Nicholas Laccetti and Charles Maresca of Martin E. Segal Co., and Martin Levy and Richard Orlando of the New York State Insurance Department.

The meeting was called to order by Chairman Gerosa at 10:15 A.M.

The Administrator read a letter to the Trustees which was sent to the Fund office regarding a change in Alternate Trustee as follows:

I.U.O.E. Local 14 & 14B

October 28, 1974

Board of Trustees, Joint Welfare and Joint
Pension Funds, Local 14 & 15, I.U.O.E.
265 West 14th Street
New York, New York

Gentlemen:

This is to advise you that Mr. Joseph Rizzuto has been appointed as Alternate Trustee representing Local 14, Joint Welfare and Pension Funds, Locals 14-15 of the International Union of Operating Engineers..

Very truly yours,

signed--Joseph M. Rizzuto
Joseph M. Rizzuto
Pres.

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Robke made a motion to accept the letter naming Joseph M. Rizzuto as Alternate Trustee. It was seconded by Trustee Maguire and passed.

Trustee Maguire explained to the Trustees that he had spoken with Ed Broderick, the Administrator of the Local 14 Vacation Fund regarding the auditors request to check the purchase of stamps made from their Fund. He further explained to Trustee Rizzuto that the purpose of this check was only to check the stamp purchase against the wages reported to the Welfare and Pension Funds, by the employers which the auditors are auditing.

Trustee Rizzuto approved the auditors request.

Attorney O'Hara advised the Trustees that Local 14 will suggest that the petition which was submitted to the District Court be dismissed when they appear on Friday, November 1, 1974. He stated that he felt it was not the proper vehicle and rather that the dissolution of the Funds should be done through the new Pension Reform Bill which was signed by the President on September 2, 1974 rather than under the Taft Hartley Bill.

Trustee Gerosa stated that his unofficial feeling was that the law was signed after the date of filing. Either may apply but suggests we follow current action.

Attorney Corcoran does not agree because of the following:

1. Petition was filed in July, 1974 following dispute of the handling of the Funds.

2. Division of opinion as to each share of the assets.

3. Taft Hartley states Trustees may bring suit and petition filed under Taft Hartley.

4. Feels we have filed properly as outlined under Taft Hartley and new Pension Reform Act. The Trustees would be Held Harmless after District Court hands down decision.

Attorney Stergios suggested that the Attorneys discuss the petition before November 1, 1974.

Trustee Gerosa said his position was that the Funds would not be split if any of the participants will be hurt.

Trustee Rizzuto asked if there was any evidence showing a reduction in benefits Trustee Gerosa advised that there was none.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Gerosa instructed the Attorneys to meet regarding the November 1st appearance at the District Court and report back to the Trustees after the meeting. He asked further if the membership of Local 14 and 15 had approved the separation of the Funds. Trustees Maguire and Rizzuto advised that they had.

Trustee Maguire stated that he thought it was already decided that the Funds were to be split and the manner determined.

Trustee Gerosa then asked Mr. Martin Levy, the New York State Insurance Examiner who is auditing the Fund, if there were any questions he wished to ask.

Mr. Levy asked Trustee Rizzuto for a copy of the report made for Local 14 by the Martin E. Segal Co.. Trustee Rizzuto advised that the only information compiled by Martin E. Segal was for the feasability of the separation of the Funds.

Mr. Levy stated that a letter from Martin E. Segal to Trustee Nolan signed by Mr. Maresca refers to a report made for Local 14.

Attorney O'Hara asked if there was any report other than the one mentioned by Trustee Rizzuto.

Mr. Maresca stated that the report was made for Local 14 only.

Mr. Levy said that a letter from Martin E. Segal says that at a meeting of Local 14 the contributions to the Funds did not reconcile.

Attorney O'Hara said that the report given at the meeting was an oral report.

Trustee Rizzuto stated that the allegation was made by the opposition who was running against the Business Manager and not by Segal.

Mr. Levy said that he was not satisfied with the reply and wanted to know where the figure came from. Mr. Maresca stated that the difference was in the wages posted to pension records as opposed to wages reported for the year.

Mr. Levy asked Trustee Maguire if he may have a copy of the report compiled for Local 15 by Mr. Faggen. Trustee Maguire replied that he could.

Trustees Gerosa and Robke suggested that the reports of the actuaries be submitted to the Trustees.

Attorney O'Hara advised that Local 14 has no report in reference to the Insurance Department's request.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Attorney Stergios suggested that the Funds records be checked regarding the allocation of wages. Trustee Gerosa stated that after the actuaries reports have been submitted the Trustees can determine what steps must be taken.

Attorney Corcoran stated that it was important that Martin E. Segal's charge of inaccuracies be cleared before appearing in court.

Trustee Gerosa thought that perhaps an independent auditor should be hired to check and review procedures used by the Funds and see if they can be updated.

Mr. Levy then referred to a letter dated June 5, 1974 signed by Trustees Gerosa and Robke which was in answer to Trustee Nolan's letter. He referred to the portion of the letter which replies to the charge made by Trustee Rizzuto and Gerald Finn that they knew of five employers who were not making the proper contributions to the Welfare and Pension Funds.

Trustee Rizzuto stated that Finn and he did not state that millions were missing.

Trustee Gerosa read Trustee Nolan's letter of May 30, 1974. The letter referred to by Mr. Levy is from the Employer Trustees in answer to Trustee Nolan's letter.

Attorney O'Hara asked Trustee Rizzuto if he stated that monies were missing.

Trustee Rizzuto explained that the potential existed that money was not reported based on the participants in the Fund.

Mr. Levy asked Trustee Rizzuto who the five employers are that failed to make the proper contributions to the Fund.

Trustee Rizzuto explained that there were no employers and it was used as political strateg.

Trustee Maguire advised that at the time he inquired as to who they were and they were given permission to go to the Funds office and check the report forms filed with the Welfare and Pension Funds.

Attorney Corcoran advised that the Funds should have the names of the five employers in order to commence action.

Mr. Orlando asked if the Funds were going to split without an actuarial evaluation.

At this point in the meeting there was a lengthy discussion regarding the number of participants in the Plan.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Robke made a motion that the actuary meet with the Administrators and make a report regarding the number of participants followed with a report to the Trustees. The motion was seconded by Trustee Maguire and passed.

Attorney Corcoran advised that the actuarial report referred to is the report filed by Tolley International for the year of 1972.

At this point in the meeting the Insurance Department Examiner left and the Financial Representatives of L. F. Rothschild, Shields & Company and the National Bank of North America were admitted.

Mr. Kampel of L. F. Rothschild reviewed their portion of the portfolio with the Trustees and noted that the equity number of issues was reduced by 20% and the bond portion was increased. He made the following recommendations to the Trustees:

Buy 2,000 shares Burroughs Corp.
Buy 2,000 shares Minnesota Min. & Mfg.
Buy 2,640 shares NCR Corp.

Sell 400 shares Dupont (EI) duNemours
Sell 3,000 shares American Express

Trustee Gerosa advised Mr. Kampel that the Trustees will discuss their recommendations and he will be advised of the Trustees action.

Mr. Dunseith of Shields Model Roland discussed their portion of the portfolio with the Trustees and made the following recommendations:

Buy $300,000 Dayton Power & Lt. 1st Mtg.
Buy $300,000 Philadelphia Elec. 1st Mtg.

Trustee Gerosa advised Mr. Dunseith that they will discuss their recommendations and he will be advised of the Trustees action.

The Representatives of L. F. Rothschild and Shields Model Roland were then excused from the meeting.

Mr. Mooney of the National Bank of North America together with the Trustees then reviewed the entire portfolio.

Mr. Mooney advised the Trustees that the Funds position in the stock market is not any different from Funds of the same size. He stated further that the Trustees should consider the common stock ratio they wish to hold. He feels it should be at least 40%. Buying into common stock should be done at the point in which they feel the market is turning around.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Gerosa noted that the Trustees spent several hours with the Representatives of A. G. Beckert at the time they completed their survey of the Fund and Beckert advised at that time that the Fund was conservatively invested. He did not think the Fund should invest in common stock at this time.

Trustee Maguire stated that he will not approve the purchase of common stock. He feels that the Fund should invest in U. S. Bonds and Notes rather than Utilities. He did not like the position of the Utility Companies regarding employment of union members.

Mr. Mooney explained that 75% of the borrowing is done by the Utility Companies and as a result most issued will be from the Utilities Companies.

Trustee Maguire asked what rate U.S. Treas. were paying and Mr. Mooney advised they are yielding about 8%.

Mr. Mooney advised that the portfolio investment was in line with the investment policy of the National Bank of North America.

The Trustees then discussed the recommendations submitted by L. F. Rothschild and Shields Model Roland and decided that they did not wish to invest in common stocks at this time and that they were to submit new recommendations.

The Trustees approved a request made by letter dated 9/23/74 from Frendel, Brown & Weissman requesting an increase in their fee for auditing employers payrolls. The increase asked was from $9.50 per hour to $12.00 per hour. The increase was approved retroactive to 10/1/74. The Trustees noted that approximately $135,000 was found to be owed after audits and that the accounts fees during this time were approximately $9,500.00

Trustee Maguire requested that he receive a copy of the auditors letter after completion of each employer audit.

The Trustees reaffirmed their telephone approval of Shields Model Roland's letters of 7/24/74, 8/5/74, 9/5/74 and their sale recommendations of 3,000 shares Zapata, 10,000 shares Crane Co., 6,000 shares Pittston Co., 700 shares I.B.M., 14,152 shares Airco and 200 shares Zerox.

The Trustees reaffirmed their telephone approval of L. F. Rothschild's letters of 7/25/74, 7/29/74 and 10/24/74.

The Trustees also reaffirmed their telephone approval of expenses for the Co-Administrators to attend the New York State Conference of Engineers and the North Eastern States Conference at Lancaster, Pa. They also affirmed their previous telephone approval of one office employee to attend I.B.M. school.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

The Trustees then continued their discussion regarding the separation of the Funds.

Trustee Rizzuto stated that the Funds should bear the cost of reconciling the Funds. Trustee Maguire stated that he does not agree that Funds should pay.

Attorney Corcoran explained that the court will decide the disposition of the Funds. They will use the actuaries report as part of their decision on net worth of the Funds. The cost of actuary should not be paid by the Fund.

Attorney O'Hara stated that if the Trustees want the actuary to work on records the Fund should pay the fee involved.

Trustee Gerosa stated that the Fund will cooperate with the actuary but will not bear any cost.

Trustee Rizzuto made a motion that Martin Segal Co. and other actuaries be paid to implement the necessary work to straighten out the administration which has led to inaccuracies called to the attention of the Trustees today.

There was no second to the motion.

Trustee Robke suggested that the actuary firms define what problems are in the Funds records.

Trustee Gerosa suggested to Martin Segal Co. that they submit an outline of what they feel must be corrected in order for them to make what they feel is an accurate survey of the Fund. Mr. Maresca stated that he would submit such an outline.
Trustee Robke made a motion that Trustee Nolan's letter should be dispensed with at this time.

Attorney O'Hara advised he will not discuss Trustee Nolan's letter at this time in his absence.

The Trustees were discussing Trustee Thomas J. Nolan's letter of May 31, 1974, Section (1) (A) "The failure or refusal of Fund office employees to provide access to records to the Co-Administrator, and a general lack of cooperation in his efforts to function on Fund matters." Trustee Gerosa asked Mr. Lore on what he based his charge of non-cooperation. Mr. Lore stated that he suggested several changes in the IBM system which were not instituted because it had been decided to split the Funds. Trustee Gerosa asked for specific instances. Mr. Lore said that the system is keyed to a member's Social Security Number and he had found errors in the input to the system. Errors in the Social Security Numbers, errors in keypunching the Social Security Numbers, and these were not verified, so there was no safeguard against wrong Social Security Numbers. Last names were not being keypunched in full, only to five

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

spaces. This was corrected. He also had asked that the Social Security Number be placed on the Medical Form submitted by the member. Mr. Salcito replied that Welfare and Pension has a certificate number that is put on medical records rather than the Social Security Number. Trustee Maguire said that we often receive wrong Social Security Numbers from members, or some members have two numbers. Mr. Lore also wanted to institute a reporting program for each member to receive a statement of his earnings.

Mr. Lore said that Mr. Salcito said that no changes would be made until the decision was made about splitting the Funds. After the split was decided upon, Mr. Lore asked to have the changes made and was told that Local 15 did not want to change, and Local 14 could do what they wished. Mr. Lore felt that this amounted to a lack of cooperation.

Mr. Lore said that another suggestion was to tie in contributions to earnings via the IBM. Trustee Gerosa said that earnings records were very hard to get. Mr. Lore said that he wanted to prevent mistakes from going into the IBM system. Attorney Corcoran asked if Mr. Lore had made any written records of these.

Attorney Corcoran asked if the allocation of contributions to earnings was for the purpose of determining what each member is earning. He was told it is to determine a member's eligibility.

Mr. Maresca and Mr. Lore said that there was a discrepancy of $10 million between the figures of Tolley Assoc. and the Martin E. Segal Co. This $10 million was found to be in unallocated funds, which they discovered and allocated properly.

Attorney Corcoran asked if Trustee Nolan had ever reported these charges to the Trustees. The Trustees told him he had not, in fact, he had asked that his letter be withdrawn; but, upon informing him that this was not possible, he had asked that it be tabled.

Trustee Gerosa requested that the Fund accountant meet with Mr. Salcito and Mr. Lore to determine if any of the suggestions made by Mr. Lore should be implemented, and report back to the Trustees. Trustee Robke seconded the motion, which was passed unanimously. Trustee Gerosa asked for any other specific recommendations. Attorney O'Hara suggested that Mr. Lore write down what his specific recommendations are.

With regard to the charge of lack of certification of eligibility, Trustee Nolan was not able to be present and Attorney O'Hara did not feel he could answer for Trustee Nolan.

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Rizzuto stated that he would like to have a positive method of collection, and would like to check it against the Stamp Funds. He was informed that this would not be valid because of premium time paid in the Stamp Funds that was not paid in the Welfare & Pension Funds. Trustee Gerosa mentioned that during the last negotiations the employers had wanted a duplicate check, which would have made a valid reporting system, but was turned down by the unions.

Regarding the question of eligibility base being too low, the Trustees had discussed and directed themselves to this question before these allegations were made. The Employer Trustees were waiting for the Union Trustees to agree on a minimum eligibility figure so that all categories of employees employed would not be hurt because of too high a base. All Trustees recognized that the present base is too low.

Regarding Survivors Options and early retirement, Tolley Assoc. had prepared the change to be included, but was asked to hold back until after the decision to split was made.

Regarding the absence of basic records to certify entitlement to benefit or compute Fund liability, the Trustees agreed that these things were not brought up to the Trustees by Trustee Nolan prior to his letter. Subsequent to the letter, it was discussed, and the Trustees were unable to arrive at what they considered a fair decision to each Union regarding early retirement and survivor benefit. Mr. Tabor was asked how the Fund arrived at an accurate figure for computation when there were unallocated funds. Mr. Tabor replied that they felt these funds were not of sufficient proportion to distort the figures, and they still felt they were able to certify an individual based on sufficient information. He also stated that the 15% unallocated funds were shown on their actuarial report to the State Insurance Department.

Mr. Lore was asked if he could determine from his discussion with Martin E. Segal Co. if the unallocated funds were mostly in Local 15 or Local 14. He replied that it is believed the unallocated funds would be mostly in Local 15. The Local Union is not recorded on the card he stated. Mr. Salcito replied that it was not recorded because it was not necessary until the Funds split. Trustee Gerosa stated he did not believe past Administrators erred when they did not put the Local number on the card. Mr. Salcito stated that now Local 14 is marked on the card, and those without notation are members of Local 15.

Trustee Rizzuto asked Mr. Salcito how he knew that the reports from the employer and the member were correct. Mr. Salcito replied that there is no way to do so except by an audit of the employers books. Trustee Rizzuto stated he would like a system that would prevent both the employer and the member from submitting false information. Attorney Corcoran stated that none of these problems were ever brought up at previous meetings.

Trustee Gerosa suggested that a copy of what was said today be supplied to Trustee Nolan and ask him if he has any further comments.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Attorney Corcoran stated that the suit for dissolution of the Funds is based upon an argument between the Local Unions regarding the division of funds. Attorney O'Hara asked if it had been stated how much each Local wanted, and was told that this had never been reported at a meeting. Attorney O'Hara said that at the hearing on Friday, November 1, 1974, he was going to vigorously oppose the processing of the petition in the Federal Court.

Attorney Stergios stated that according to the new Pension Reform Law any person who terminates, if he is vested, you must tell him what his rights are. In fact, anybody who requests it. You can also go beyond that if you choose. He also stated that the basic concern as a Trustee is to make sure that we keep present realities in mind, and that there is still a fund to be run.

Trustee Rizzuto moved that the counsel for the Fund comply with the Pension Reform Law of 1974 in giving notice to the U. S. Government agency as directed by the statute. Trustee Robke seconded the motion. Attorney Corcoran said he did not feel that this is the proper procedure, and that he is an adverse position to Attorney O'Hara as counsel for Local 14. Trustee Robke withdrew his second of the motion. Attorney O'Hara said he feels there is a legal obligation to comply with the statute. Attorney Corcoran said there is a provision for petitioning the U. S. Court, and if the judge declines jurisdiction, which he has not, then you apply to the agency of the U. S. Government, which is not the Department of Labor, but a special corporation to be set up. Trustee Gerosa moved that each Trustee be authorized up to $25,000 to secure counsel to represent them in the dissolution of the Funds, and that such monies be paid by the Joint Welfare and Pension Funds. Trustee Maguire seconded the motion. It was agreed that an alternate Trustee is to be considered as represented by the counsel for the Trustee for whom he is the alternate. The motion was passed unanimously.

Trustee Robke made a motion to accept the Minutes of the meeting held on July 18, 1974. It was seconded by Trustee Maguire and passed.

Trustee Maguire made a motion to accept the Administrators Report and approve the pension applicants . It was seconded by Trustee Rizzuto and passed.

There being no further business, the meeting adjourned and the next meeting was scheduled for January 2, 1975 at the General Contractors Association office.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE--
SPECIAL MEETING OF THE JOINT WELFARE FUND HELD ON
JUNE 11, 1974.

(Reproduced, *supra*, at page 83a as Exhibit A,
annexed to the affidavit of Thomas J. Nolan.)

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE.

JOINT WELFARE FUND

Minutes of the meeting of the Board of Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, AFL-CIO, held at the office of the General Contractors Association located at 60 East 42nd Street, New York, New York on January 3, 1974.

The Trustees present were Alfred G. Gerosa, Thomas A. Maguire, Thomas J. Nolan, and George E. Robke. Also present were Administrator Joseph J. Salcito, Attorney William J. Corcoran and Sol Tabor of Tolley International.

The meeting was called to order by Chairman Gerosa at 10:45 A.M.

Trustee Maguire made a motion to accept the minutes of 10/4/73. It was seconded by Trustee Robke and passed.

Trustee Robke made a motion to accept the Administrator's Financial Report. It was seconded by Trustee Nolan and passed.

The Trustees approved the exempt members.

The Administrator advised the Trustees that as the auditor was completing his audits a letter was sent to those employers where additional contributions were due for the year ending 12/72.

Attorney Corcoran requested that a copy of these letters be forwarded to him.

The Trustees instructed the Administrator to provide the auditor with ten additional employers to be audited.

The National Bank of North America representatives and Shields & Co. and L. F. Rothschild representatives were then called into the meeting.

Mr. Kampel of L. F. Rothschild reviewed his portion of the portfolio for October - December, 1973 with the Trustees.

Mr. Dunseith of Shields & Co. introduced Mr. William Kautz, a Vice President of Shields & Co. who will be replacing Mr. Paul Travia. Mr. Kautz, along with the Trustees then reviewed the Shields & Co. portion of the portfolio for the three month period October - December, 1973.

Trustee Gerosa advised L. F. Rothschild and Shields & Co. to submit their year end reports on the portfolio to the Trustees in a manner in which they can be compared.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Mr. Mooney of the National Bank of North America then gave the Trustees a brief outline on the investment policy of the bank. He advised the Trustees that the banks cautionary position regarding investments had changed somewhat since January of 1973 and they now feel that this Fund can invest their current cash reserves in certain areas and with quality stocks at this time if the Trustees so desire.

They also suggest the purchase of bonds in the high three quality levels.

Trustee Gerosa asked Mr. Olson about the Fund. Mr. Olson advised the Trustees that the portfolio from L. F. Rothschild and Shields & Co. will show true pictures of the Fund. At that time they will review the portfolios and report to the Trustees.

The representatives of the National Bank of North America and management houses were then excused from the meeting.

Trustee Nolan brought to the attention of the Trustees on the Annual Report for 1972 an amount of $246,000 which was not drawing interest.

Inasmuch as the offices of Klein, Katcher & Schultheis were in the next building the Trustees instructed the Administrator to telephone Mr. Katcher and ask that he come to the meeting and explain the entry on the Annual Report.

Mr. Katcher arrived and in answer to Mr. Nolan explained that the amount in question was in various checking accounts for current expenses.

Trustee Nolan advised the Trustees that Local 14 had had a survey made by Martin E. Segal & Co. which he would like to present and review with the Trustees. Trustee Gerosa asked Mr. Tabor to leave the meeting so that the report of Martin E. Segal Co. can be reviewed. He advised Mr. Tabor that he will have an opportunity to reply on the report.

Trustee Nolan informed Mr. Tabor of the reason Local 14 had survey made by Martin E. Segal Co. and Mr. Tabor was excused at this time.

Mr. Nolan further informed the Trustees that Local 14 was requesting a change in Actuary and were requesting that a Co-Administrator be hired representing Local 14.

Trustee Nolan briefed the Trustees on report and read a letter to the Trustees which was sent to his membership regarding a special meeting and is as follows:

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

"Dear Sir & Brother:

At our last two regular meetings lengthy discussion on Welfare and Pension Fund reforms took place. The next Trustees meeting of these Funds will take place on January 3, 1974.

As your Trustee on these Funds, I would like to present your views and wishes to the Board of Trustees in the form of a demand for reforms. These reforms would be especially beneficial to Local 14 members since most of us feel that there are certain inequities in the current plan.

Therefore, we are having a special meeting of Local #14-14B at 8:00 P.M. on Thursday, December 27, 1973 at the Auditorium, 305 West 44th Street, New York City (8th Ave.). At this time we will go in depth the suggested reforms or improvements desired by the membership and recommended by the Pension and Welfare Committee of this Local. These changes will be of monumental importance to all of our members so I urge every member to attend.

My best wishes to you and your families for a "Healthy and Happy New Year".

Sincerely and Fraternally,

Thomas J. Nolan
Business Manager"

The Trustees then discussed the recommendations submitted by Local 14.

Trustee Maguire advised the Trustees that he could not draw any conclusions at this time and said it was necessary that Local 15 have an independent survey made of their membership before any definite conclusion can be made.

It was then decided by the Trustees that upon completion of the Local 15 audit, both audits would then be reviewed.

Mr. Tabor was recalled into the meeting and Trustee Gerosa informed him of the Trustees decision at this time. Upon completion of reports actuaries will then submit their findings to the Trustees.

Trustee Nolan made a motion that a representative of Local 14 be appointed as Co-Administrator. It was seconded by Trustee Robke and passed. The salary was set at $10,000 per year and the employment date was to be determined at the next Trustees meeting.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

The Trustees approved the Co-Administrator so as to bring the employee level of the Fund back to the position it was at the time Mr. O'Sullivan was an employee.

The Administrator informed the Trustees that effective January 1, 1974 the Hospital Deductible for Medicare was increased from $72 to $84 and the room and board charges from the 61st to the 70th day of hospitalization was increased from $18 to $21 per day. The Fund has been making these payments available to retired members and their wife over age 65.

Trustee Maguire made a motion to allow the new payment. It was seconded by Trustee Nolan and passed.

There being no further business the meeting adjourned and the next meeting was set for March 7, 1974 at the Building Trades Employers Association.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A MAGUIRE

JOINT PENSION FUND

Minutes of the meeting of the Board of Trustees of the Joint Pension Fund of the International Union of Operating Engineers, AFL-CIO held at the office of the General Contractors Association located at 60 East 42nd Street, New York, New York on January 3, 1974.

The Trustees present were Alfred G. Gerosa, Thomas A. Maguire, Thomas J. Nolan, and George F. Robke. Also present were Administrator Joseph J. Salcito, Attorney William J. Corcoran and Sol Tabor of Tolley International.

The meeting was called to order by Chairman Gerosa at 10:45 A.M.

Trustee Maguire made a motion to accept the minutes of 10/4/73. It was seconded by Trustee Robke and passed.

Trustee Robke made a motion to accept the Administrator's Financial Report. It was seconded by Trustee Nolan and passed.

The Trustees approved the members applications submitted for pension benefits.

The Administrator advised the Trustees that as the auditor was completing his audits a letter was sent to those employers where additional contributions were due for the year ending 12/72.

Attorney Corcoran requested that a copy of these letters be forwarded to him.

The Trustees instructed the Administrator to provide the auditor with ten additional employers to be audited.

The National Bank of North America representatives and Shields & Co. and L. F. Rothschild representatives were then called into the meeting.

Mr. Kampel of L. F. Rothschild reviewed his portion of the portfolio for October - December, 1973 with the Trustees.

Mr. Dunseith of Shields & Co. introduced Mr. William Kautz, a Vice President of Shields & Co. who will be replacing Mr. Paul Travia. Mr. Kautz, along with the Trustees then reviewed the Shields & Co. portion of the portfolio for the three month period October - December 1973.

Trustee Gerosa advised L. F. Rothschild and Shields & Co. to submit their year end reports on the portfolio to the Trustees in a manner in which they can be compared.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Mr. Mooney of the National Bank of North America then gave the Trustees a brief outline on the investment policy of the bank. He advised the Trustees that the banks cautionary position regarding investments had changed somewhat since January of 1973 and they now feel that this Fund can invest their current cash reserves in certain areas and with quality stocks at this time if the Trustees so desire.

They also suggest the purchase of bonds in the high three quality levels.

Trustee Gerosa asked Mr. Olson about the Fund. Mr. Olson advised the Trustees that the portfolio from L. F. Rothschild and Shields & Co. will show true pictures of the Fund. At that time they will review the portfolios and report to the Trustees.

The representatives of the National Bank of North America and management houses were then excused from the meeting.

Trustee Nolan brought to the attention of the Trustees on the Annual Report for 1972 an amount of $856,000 which was not drawing interest.

Inasmuch as the offices of Klein, Katcher & Schultheis were in the next building the Trustees instructed the Administrator to telephone Mr. Katcher and ask that he come to the meeting and explain the entry on the Annual Report.

Mr. Katcher arrived and after going through his work sheets for that report, explained to the Trustees that the figure was incorrectly entered in the wrong column on the report. The $856,000 was in fact drawing interest and he apologized to the Trustees for this error on the report.

Attorney Corcoran requested Klein, Katcher & Schultheis to submit a letter to the Fund explaining the error.

Trustee Nolan advised the Trustees that Local 14 had a survey of the Fund made by Martin E. Segal & Co. which he would like to present and review with the Trustees. Trustee Gerosa asked Mr. Tabor to leave the meeting so that the report from Martin E. Segal can be reviewed. He advised Mr. Tabor that he will have an opportunity to reply on the report.

Trustee Nolan informed Mr. Tabor of the reason Local 14 had survey made by Martin E. Segal Co. and Mr. Tabor was excused at this time.

Mr. Nolan further informed the Trustees that Local 14 was requesting a change in Actuary and were requesting that a Co-Administrator be hired representing Local 14.

Trustee Nolan briefed the Trustees on report and read a letter to the Trustees which was sent to his membership regarding a special meeting and is as follows:

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

"Dear Sir & Brother:

At our last two regular meetings lengthy discussion on Welfare and Pension Fund reforms took place. The next Trustees meeting of these Funds will take place on January 3, 1974.

As your Trustee on these Funds, I would like to present your views and wishes to the Board of Trustees in the form of a demand for reforms. These reforms would be especially beneficial to Local 14 members since most of us feel that there are certain inequities in the current plan.

Therefore, we are having a special meeting of Local #14-14B at 8:00 P.M. on Thursday, December 27, 1973 at the Auditorium, 305 West 44th Street, New York City (8th Ave.). At this time we will go into depth the suggested reforms or improvements desired by the membership and recommended by the Pension and Welfare Committee of this Local. These changes will be of monumental importance to all of our members so I urge every member to attend.

My best wishes to you and your families for a "Healthy and Happy New Year".

Sincerely and Fraternally,

Thomas J. Nolan
Business Manager"

The Trustees then discussed the recommendations submitted by Local 14.

Trustee Maguire advised the Trustees that he could not draw any conclusions at this time and said it was necessary that Local 15 have an independent survey made of their membership before any definite conclusion can be made.

It was then decided by the Trustees that upon completion of the Local 15 audit, both audits would then be reviewed.

Mr. Tabor was recalled into the meeting and Trustee Gerosa informed him of the Trustees decision at this time. Upon completion of reports actuaries will then submit their findings to the Trustees.

Trustee Nolan made a motion that a representative of Local 14 be appointed as Co-Administrator. It was seconded by Trustee Robke and passed. The salary was set at $10,000 per year and the employment date was to be determined at the next Trustees meeting.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

The Trustees approved the Co-Administrator so as to bring the employee level of the Fund back to the position it was at the time Mr. O'Sullivan was an employee.

There being no further business the meeting adjourned and the next meeting was set for March 7, 1974 at the Building Trades Employers Association.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE.

Special Trustees Meeting of the Joint Welfare & Joint Pension Fund of the I.U.O.E. held on Friday Nov. 8, 1974 at the Gen'l. Contr. Assoc.

The Meeting was called to order at 2:15 P.M. by Trustee Gerosa.

Those present were Trustees Alfred G. Gerosa, George E. Robke, Thomas A. Maguire, and Thomas J. Nolan. Others present were Alternate Trustee Joseph Rizzuto, Administrators Nicholas Lore and Joseph J. Salcito, Attorneys William J. Corcoran, Peter D. Stergios, Richard L. O'Hara, Edward Fee and Sol Tabor of Tolley International.

The meeting was called by the Trustees to determine whether an impasse exists as to the manner in which the Funds are to be separated.

Attorney O'Hara contended that there is no impasse and that the actuary for the Fund should file a report to the Trustees outlining the distribution of the funds and then Locals 14 and 15 can decide if the figures are acceptable.

Trustee Gerosa stated that if the Locals agree it does not mean that the Employer Trustees will agree.

Trustee Maguire made an offer of 20% of the funds to Local 14. Trustee Nolan stated Local 14 will accept 50%. Attorney O'Hara asked the Trustees to make a motion to have the actuary submit breakdown procedures.

Attorney Corcoran stated he felt that Attorney O'Hara is avoiding the issue. When they appeared in court and gave the background of the funds he alluded to the charges made by Local 14 in their letter and the answers from Local 15 and the Employer Trustees. The representative of the Insurance Department, at the last Trustees meeting, questioned Trustee Rizzuto regarding the five employers they claimed were not making proper contributions to the Funds and Trustee Rizzuto commented that it was political strategy. Martin Segal & Co. claims that there are inaccuracies and inconsistancies in the Fund, one of which is that many cards do not have the Local designation. Up to this point they were joint Funds and the fact that the Local Number did not appear was immaterial.

At the district court Attorney O'Hara claimed he wanted the petition removed because the Pension Reform Act governs the issue. Attorney Corcoran disagrees because the law is not effective for multi-employer funds until January 1, 1978, and not applicable now. Why does Local 14 not want to have the Funds separated by a master appointed by the court? The Funds are not to be terminated, after separation of Funds, they will continue to operate. Most important is that Trustees are held immune from a future lawsuit by participants claiming that Trustees did not act properly. If the court decides

EXHIBIT F, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

case, Trustees will be free of lawsuits. The Taft Hartley Bill says if there is an impasse it must be filed with the Federal Court. The Trust Agreement makes the same statement. Further the petition was filed prior to the signing of the Pension Reform Act. Attorney Corcoran's opinion is that the separation of the Funds has been properly filed with the Court. Why does Local 14 not want the Court to decide? There is an impasse because each Local will lay claim to what they believe is theirs. Martin Segal Co. issued a report showing that Local 14 has a claim to $12,000,000.00.

Trustee Gerosa stated that Martin Segal Co. memorandum of October 31, 1974 creates an impasse with the many issues it raises.

Trustee Rizzuto stated that Local 14 never claimed how many participants were in the Fund.

Attorney O'Hara stated he still disagrees and wants the Trustees to have the Funds' actuary submit plan of dissolution.

Trustee Gerosa asked why the court cannot decide.

Attorney O'Hara will not agree to that.

Trustee Rizzuto stated that there are three different sets of participants.

Attorney O'Hara would like to have actuary compile current liability of Funds.

Attorney Corcoran stated that the District Court Judge directed the Trustees to meet to agree that there was an impasse and feels that Attorney O'Hara is not acting in good faith.

Attorney O'Hara stated he felt there are problems in the petition that was filed and he must move to dismiss and suggested again that the actuary of the Fund make up a report. Attorney Corcoran asked what the alternative was. Attorney O'Hara stated that if there is no impasse the court does not have jurisdiction.

Trustee Robke stated that the employers feel they have an impasse in that they wish to go to Court and Local 14 does not.

Attorney Stergios stated that if the Trustees cannot agree then it would create an impasse.

Attorney O'Hara wants the actuary to present a report for the separation of the Funds and then if the Trustees disagree he will agree that there is an impasse.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Gerosa stated that the B.T.E.A. will not engage an actuary to do a study and his group will not agree to any actuarial report unless it was approved by the Court. Attorney O'Hara asked how the Court will decide without figures. Attorney Corcoran advised that the Master will decide and supervise separation and both sides can then argue merits of the Court's decision.

Trustee Gerosa stated he does not believe Local Unions can agree and will not agree to anything less than the Court deciding the issue.

Trustee Maguire stated that when the issue first came up Trustee Nolan asked for separation. Each Local had their actuary make a report and Trustee Gerosa has stated that the employers will not agree to either actuarial report on dissolution.

Mr. Tabor advised that the Funds have been Joint Funds and records have always been kept combined and not separately.

Attorney O'Hara made a motion in behalf of Trustee Nolan as follows: Motion to direct the Funds' actuary to prepare and distribute to the Trustees a proposed plan of distribution pursuant to the Trustees previous motion to terminate.

Trustee Gerosa asked if there was a second to Trustee Nolan's motion and noted that there was no second to the motion.

Trustee Robke stated that because there seems to be a dispute regarding the number of participants and dispute regarding the allocation of money of funds in that Trustee Nolan said he would accept 50% and Trustee Maguire has offered 20%, that this represents an impasse and a motion be made as such.

Trustee Nolan said that the 50% figure was not a motion and if the actuary comes up with a report does not believe this will be an impasse.

Attorney O'Hara said there is not enough adequate information to act on.

Trustee Maguire seconded Trustee Robke's motion and Trustee Gerosa, Trustee Robke and Trustee Maguire voted in favor of the motion and Trustee Nolan voted No.

Trustee Rizzuto asked if Attorney Corcoran would clarify unit vote.

Attorney Corcoran stated that at a meeting a number of years ago that Trustee James Dillon raised a point in which Attorney Corcoran ruled in his favor and at the time it was decided that each Trustee had one vote.

Attorney Corcoran asked if he was authorized to notify the Court that there is an impasse. Trustee Nolan stated that he objects.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF THOMAS A. MAGUIRE

Trustee Gerosa would like a motion requesting Attorney Corcoran ask for a deferment of Sec. 414B of the new Pension Reform Act regarding Fiduciaries responsibility which is to be effective January 1, 1975. Trustee Robke made the above motion. It was seconded by Trustee Maguire and passed.

Trustee Gerosa raised the question of insurance coverage under the new Pension Reform Act of 1974.

Mr. Tabor advised that his firm is in the process of making up application at this time and upon completion it will be forwarded.

Trustee Robke stated that the Trustees never received a report of the meeting which was held at Local 14 offices with Trustee Maguire, Trustee Nolan, Funds' Actuary, Funds' Attorney, Funds' Administrators, Trustee Rizzuto, Gerald Finn and Martin Segal & Co.

Trustee Gerosa instructed that a written report regarding the outcome of that meeting be submitted to the Trustees.

Trustee Gerosa then brought up the investment policy.

Trustee Maguire stated that he was not in favor of the last recommendations submitted by Shield, Model Roland and would like the surplus money invested in U. S. Notes. He advised the Co-Administrator to check with him before any recommendations are approved.

Trustee Gerosa said it appeared as though the return on the latest Shield Model Roland recommendations were less than those originally submitted.

Trustee Maguire stated that he felt U. S. Notes at 8% are a good investment at this time.

Trustee Gerosa directed the Funds' Attorney and Actuary to review the New Pension Reform Act and notify the Trustees of any change required in the existing trust instrument to comply with the Federal Pension Reform Act of 1974.

There being no further business the meeting adjourned at 3:50 P.M.

Joseph Maguire

AFFIDAVIT OF GEORGE E. ROBKE IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

AFFIDAVIT IN OPPOSITION TO MOTION OF LOCAL 14 TO DISMISS PETITION

Index No.
74 Civ. 2887
(R.J.W.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

GEORGE E. ROBKE, being duly sworn, deposes and says:

1. I am the Assistant to the Manager of General Contractors Association of New York, Inc. (herein "GCA"). GCA, upon authorization from its 117 active member contractors, negotiates and executes collective-bargaining agreements covering employees who are members of Local Union 14, 14B, 15, 15A, 15C, and 15D of the International Union of Operating Engineers, AFL-CIO. All such contractors pursuant to their collective-bargaining agreements contribute to the Joint Pension and Welfare Funds of the said Unions (herein "Funds") at the rate of 5% of the gross wages paid to their employees who are members of said Local Unions. Since in or about September, 1973, I have been

an employer trustee of the Funds.

2. On or about May 31, 1974, Mr. Thomas J. Nolan, a union trustee of the Funds and the President and Business Manager of Local 15, sent a letter (herein, "Nolan Letter") to the Funds' trustees alleging deficiencies in the administration and intimating that he would recommend "a division of the Funds into separate Funds for each local union." A copy of the letter is attached to the Affidavit of Thomas A. Maguire, union trustee, and marked therein as Exhibit "A".

In response to the Nolan Letter, I and Mr. Alfred G. Gerosa, Chairman of the Board of Trustees and an employer trustee, sent a letter dated June 5, 1974 to Mr. Nolan requesting him to substantiate and explain his charges so that the trustees, in fulfillment of their fudiciary responsibility, could take any action necessary and appropriate.

3. Without response to the letter sent by Mr. Gerosa and myself, the Nolan Letter was "tabled" at a special meeting of the trustees held on or about June 11, 1974. Not satisfied with this disposition of the Nolan Letter, and despite the efforts of Mr. Nolan to withdraw it, I and Mr. Gerosa have insisted on answers to the charges and insinuations therein. Even though at a meeting of the trustees on or about October 30, 1974, Mr. Rizzuto, a union trustee, termed the Nolan Letter "political strategy", and at the most recent meeting of the trustees held on January 3, 1975 Mr. Nolan offered to adopt the explanation

of the Nolan Letter made by Mr. Rizzuto, on the insistence of myself and Mr. Gerosa the trustees have acted to insure that the Nolan Letter, and any and all charges regarding administration of the Funds, are answered completely. This investigation is continuing.

4. At the special meeting on June 11, 1974 Mr. Nolan requested that the Funds be "split" as soon as possible. A motion was therefore passed unanimously that the Funds would be separated under the jurisdication and supervision of the U.S. District Court. It was my intention, and upon information and belief, that of Messrs. Gerosa and Maguire, that the Funds be divided as follows:

a. a Welfare Fund for Local 14;

b. a Pension Fund for Local 14;

c. a Welfare Fund for Local 15;

d. a Pension Fund for Local 15;

However, an impasse existed as to the manner in which the Funds should be "split" and how the monies of the Funds should be allocated as among the four resulting funds. Along the lines of the trustees' motion, a resolution was passed at a General Membership Meeting of the GCA, held on or about June 27, 1974, authorizing the separation of the Funds into the four funds as aforementioned.

Accordingly, William J. Corcoran, Esq., Counsel to the Funds, on or about July 3, 1974, filed a petition in the U.S. District Court, S.D.N.Y., for the appointment of a Special Master pursuant to 29 U.S.C. § 181(c)(5) (herein, "Petition"),

a copy of which was served on me.

5. Because of the complexities involved in the separation of the Funds, involving a total of about $36,000,000; it was at the time of the making of the motion as aforesaid and the filing of the Petition, and now it is my desire and I believe that of Messrs. Gerosa and Maguire, that to best protect the interests of the Funds' beneficiaries and to preclude any subsequent criticism relating to the action taken by the trustees, the separation of the Funds should be accomplished under the supervision of a Special Master within the jurisdiction of the Federal Court.

6. It is my further belief, and I believe that of the other trustees as evidenced by the unanimously passed motion as aforementioned, that at the time of said motion no trustee wanted a so-called "impartial umpire" such as provided by Article V of the Agreement and Declaration of Trust, dated January 1, 1956, in the event of an impasse.

It was and is my belief that no such impartial umpire could have been or now can be agreed upon by the trustees. Hence, to have gone through the motions of searching for and agree upon such impartial umpire would have been a silly and empty gesture on the part of the trustees.

AFFIDAVIT OF GEORGE E. ROBKE IN OPPOSITION TO MOTION

7. I would not agree at the time of the trustees' decision to separate the Funds, will not now agree, and have never agreed to the selection of an impartial umpire to resolve the question of the allocation of the monies in the Funds.

GEORGE E. ROBKE

Sworn to before me this
16 day of January, 1975

Notary Public

AFFIDAVIT OF ALFRED GEROSA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)	AFFIDAVIT IN OPPOSITION TO MOTION OF LOCAL 14 TO DISMISS PETITION INDEX NO. 74 Civ. 2887 (R.J.W.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALFRED GEROSA, being duly sworn deposes and says:

1. I am a Trustee of the Joint Welfare and Pension Funds, International Union of Operating Engineers and make this Affidavit in Opposition to the Motion of the representatives of Local 14, 14B, International Union of Operating Engineers to dismiss the Petition pending in this Court for the appointment of Special Master to hear proof on the separation of the Joint Welfare and Pension Funds and to report the same back to this Honorable Court. I represent as Employer Trustee, those member

employer associations which are part of the Building Trades Employers Association, and such other independent building contractors who are in Collective Bargaining Agreements with the two local unions; namely Local 14, 14B, and Local 15, 15A, 15C, 15D. My colleague, George Robke, is the employer Trustee representing the Employer Associations who are part of the General Contractors Association who have designated the latter to represent them in dealing with the two Operating Engineers Unions.

2. Mr. Robke and myself, representing as we do the majority of the employers in collective bargaining agreements with the two unions are firmly of the opinion that an impasse exists between Mr. Thomas Nolan, Union Trustee, representing Local 14. Mr. Maguire representing Local 15, Mr. Robke and myself. The differences are many and great. For instance, each of the respective unions are claiming as their share of the corpus amounts that are miles apart. I understand Mr. Maguire expressed a willingness to give Local 14, 20% of funds whereas, Mr. Nolan stated he wanted 50%. There is a marked difference in the number of participants represented by Locals 14 and 15, respectively. The latter union claims that there is four to one ratio in participants and hence that the contributions

generated by these numbers is on the same ratio of 4 to 1 or better. There was an intent on the part of Mr. Robke and myself to have the Court appoint the Special Master and this intent was present from the very beginning, when once it was known that Local 14 desired to separate and divide the funds.

There was no way to select an impartial umpire as the two contending parties could not agree on a person suitable to each or for that matter to the Employer Trustees. It was the majority opinion of the Trustees that attempting to designate an impartial umpire would be a futile act as evidenced by the die-hard attitude assumed by each when they offered the names of close relatives as possible umpires. We all were aware that these so-called designations were not serious but they pointed up the inability or desire to have any umpire other than that appointed by this Court. The matters are complex and of profound importance, in the realization of the fact that the future welfare and pension rights of over 7,000 persons are at stake. Not only could we not agree on an impartial umpire, but we could not think of any person in whom Mr. Robke and myself would have trust to do the job. The detailed acturial divisions of the moneys involved and the complexity of the law, leaves me without any person I could

in good conscious name to do this job, having in mind the Pension Fund is valued at over $30,000,000.00 while the Welfare Fund is valued at about $6,000,000.00. In the present state of the widespread claims made by each union, there would be no person whom all would accept voluntarily.

I have read over the affidavit of Mr. Thomas A. Maguire, Union Trustee and concur with him in stating that an impasse exists between the Trustees which can be resolved only by the aid of this Court in appointing a Special Master whose neutrality, ability and competence would not be questioned by any of the parties to this lawsuit.

WHEREFORE, I respectfully pray that the motion for the dismissal of the Petition be denied and that this Honorable Court appoint a Special Master as requested in the Petition.

/S/ Alfred Gerosa
ALFRED GEROSA

Sworn to before me this
16th day of January, 1975.

Notary Public

BEATRICE SCHIAVONE
Notary Public, State of New York
No. [illegible]
Qualified in Bronx County
Commission Expires March 30, 1976

BEST COPY AVAILABLE

REPLY AFFIDAVIT OF THOMAS J. NOLAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

AFFIDAVIT

74 Civ. 2887

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STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

THOMAS J. NOLAN, being duly sworn, says:

1. I am Business Manager and Financial Secretary of Local 14 and 14B of the International Union of Operating Engineers and one of the Union Trustees for the Joint Welfare Fund and Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, (hereinafter the "Joint Funds") and am fully familiar with the facts and proceedings heretofore had herein. I make this affidavit in reply to Trustee Maguire's affidavit opposing Local 14's motion to dismiss the petition herein.

2. In his affidavit, dated January 14, 1975, Trustee Maguire accuses the representatives of Local 14 of attempting to wrest jurisdiction of this matter from this Court "for reasons that are not altogether known and clear" (para. 2). The reasons

for Local 14's present posture were stated in my previous affidavit submitted in support of Local 14's motion to dismiss, but since Mr. Maguire has failed to grasp them perhaps they should be repeated. To begin with the question of jurisdiction in this proceeding is paramount. If, in fact, this Court, although it lacked jurisdiction, appointed an umpire to settle the Funds and overlook their termination and distribution pursuant to the termination provisions of the Funds, would not the new and separate funds. which will be established on the basis of portions of the previously existing Funds, be subject to potential litigation instituted at the behest of any disgruntled participants? The resulting instability would affect not only the newly created Local 14 Funds but also Local 15's as well. Thus we do not seek to wrest jurisdiction from any court. On the contrary, our intent is to enforce the provisions of the Labor Management Relations Act as they relate to the jurisdiction of this Court, and in the process show that in fact the majority of Fund Trustees are in direct violation of the Act when they attempt to confer jurisdiction upon the Court by trustee vote.

3. A second motivating factor for the instant motion is the signing into law of the Employee Retirement Income Security Act of 1974. It is my understanding that the Act sets up a corporation to underwrite pension benefits in the case of separation or termination where the plan itself would not be sufficiently funded to provide these benefits. It seems to me, that as fiduciaries, the Trustees should make every attempt to ascertain whether the provisions of the Act are applicable to the present situation. Moreover when the Trustees voted on June 11, 1974

to terminate the Funds pursuant to the termination provisions thereof (Exhibit A, annexed to original Nolan aff.), the Act had not as of yet been passed nor had anyone at that time had knowledge of its provisions. Therefore, if as Messrs. Maguire and Corcoran suggest "termination" is the controlling phrase, this is precisely what we have attempted to do with the present funds. Moreover, the actual "termination" will take place at a time when the Act is in force and effect. However, for reasons unknown, Local 15 appears to be doing everything possible to remove the Funds from the protection of the Act or at least to eliminate the question of the applicability of the Act to the "termination" of the Funds.

4. A third reason for the motion was the biased slant of the petition drawn up by Mr. Corcoran as legal counsel for the Fund, a bias which was decidedly in favor of Local 15. As circumstances developed, we now find that Mr. Brady, a member of Mr. Corcoran's firm, is representing Local 15 in this action. Let me take this opportunity to state that I do not question the integrity of Messrs. Corcoran and Brady. However, when you negotiate a contract for both sides of the table, it behooves any third parties involved to take whatever recourse is necessary for their protection.

5. With respect to the Trustees' failure to ever attempt to select an impartial umpire pursuant to the provisions of our Trust Agreements, the affidavits of the other three Trustees to the effect that such an act would be futile is mere afterthought on their part. In fact, at a meeting of the Trustees of

the Joint Funds held on January 2, 1975, the Trustees for the first time attempted to confront this issue. It is ironic that after Local 14's papers and memorandum of law were submitted the Trustees found it necessary to perform this futile act. Of course counsel for Local 14 objected to this action as once again an attempt to retroactively cure a fatal defect in the Trustees' petition by fabrication. The Trustees argue that the present matter is of such moment that they would dare not venture an opinion on an arbitrator. However, as Trustees we are duty bound by the provisions of the Trust to do just that. It would not have been futile to attempt to select an umpire as the other Trustees suggest. What they are really saying is for their own protection they didn't want to get involved in such a selection. That is not futility, that is omission and by this breach of duty they may be creating the precise situation they were attempting to avoid. More pertinent, however, to their lack of an attempt to select an umpire, is the fact that there was never an impasse on an administration function which would necessitate such a selection. From the very beginning the Trustees attempted to vote their way into federal court. I have no objections to going to court; I just want to avoid a situation, such as the present, where there is a strong possibility that all subsequent action pursuant to the court order could be voided.

6. Although the Trustees' affidavits are replete with references to impasse situations, it should be noted that in no instance did any of these alleged impasses occur prior to the

commencement of this suit nor is any involved with the proper function of the administration of these funds. Under the vote of June 11, 1974, termination was to proceed pursuant to the termination provisions of the Funds. This would of necessity involve a determination of the pension credits of the various participants. To date, no such analysis has been attempted. Instead the other Trustees are content to argue that whether or not we should go to court is an arbitrable decision under the Agreement. I have been advised by counsel that it is questionable whether an umpire could decide such an issue since it is essentially a legal dispute. I relate this only to indicate the frustration inherent in Local 14's attempt to effect termination pursuant to our trust agreement.

7. Although I have been advised by counsel not to go off on a tangent as to facts and circumstances extraneous to the issues before the Court, there are certain discrepancies in Trustee Maguire's affidavit to which reply must be made in order to place this matter in its proper perspective. Trustee Maguire's contention that the members of Local 15 earn for the most part salaries commensurate with those earned by members of Local 14 is incorrect. The pay scale for members of Locals 14 and 14B ranges from a high of 11.34 per hour for operators of Three Drum Derricks (40 hr. week) to a low of 9.54 an hour for operation of boilers (40 hr. week), with increments throughout the scale for certain operations depending on the length of the boom involved. The pay scales in Local 15 are on a descending scale as you go from Local 15 to 15D. Upon information and belief, the high in Local 15 is 10.48 per hour for certain maintenance and junior engineers (40

hr. week) ranging to a low in Local 15D to 6.42 per hour for rod men on the Building level (40 hr. week). Members of Local 15D on the Heavy Construction Level are on an even lower wage scale, although presently we have been unable to obtain the figures. From work ups of projections from figures we have been able to obtain from the Fund office, and we are not suggesting that these total amounts are determinative to any extent of the actual totals involved, but should be used only as a basis of comparison of the two locals, the members of Local 15 earn approximately, on an average of $13,700 per year while members of Locals 14 earn in excess of $17,000 per year. Thus to talk in terms of bare membership figures is misleading as to the amounts of accrued pension credits which under the termination provisions of the plan, are to be protected.

8. Insofar as Mr. Maguire has stated that the reasons precipitating the present termination were political in nature, I must state that what has concerned Local 14 from the inception was (1) a desire to work within the Funds to achieve a positive method of collection which would effectively insure collection from all participating employees; and (2) to have the Fund benefits reflect the earnings of the average full time employees participating in these funds by reaching a reasonable level of participation. Activities towards these ends did not start in 1974 around election time but in 1971 immediately subsequent to my successful election in that year. The letter that I had sent May 31, 1974 was not a threat but rather a request to effectuate the above mentioned

reforms. I think it would be helpful and beneficial to members of Locals 14 and 15 if pension and welfare benefits proceeded on a multilevel plane so as to compensate members in the proportion to the amount each individual paid in. If it became apparent that the administration of the Joint Funds was not willing to effectuate reform, then as a last resort I would seek to terminate the Funds and start anew with separate and distinct funds. In that vein, no one in Local 14 ever attempted to accuse anyone of any wrongdoing with respect to the Funds. Our only contention is that within the Funds there is a potential for grave shortages to exist because of the ineffective collection methods used. We never stated that $10,000,000 was missing from the Funds, but merely that as a bookkeeping procedure there is $10,000,000 which has not been allocated to the cards of the individual members. As a bookkeeping measure, collections just are not adding up to what they should be. Here there is interplay between the ineffective methods of collection and possible shortages in collection. Moreover, I never attempted to recall my May 31, 1974 letter, but rather when the reforms were ignored, it became academic. There are a number of other discrepancies in the Trustees' affidavits which will be rectified when the occasion warrants.

THOMAS J. NOLAN

Sworn to before me this
29th day of January, 1975.

SUR-REPLY AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)	Index No. 74 Civ. 2887 (R.J.W.) REPLY AFFIDAVIT TO AFFIDAVIT OF THOMAS J. NOLAN

----------X

STATE OF FLORIDA)
) ss.:
COUNTY OF DADE)

THOMAS A. MAGUIRE, being duly sworn, deposes and says:

1. I am the President and Business Manager of Local 15, and Union Trustee of the above Funds. As Third International Vice President, I am in attendance at the meetings of the AFL-CIO in Miami Beach, Florida and hence make this reply affidavit from here. The reply affidavit is made to the affidavit of THOMAS J. NOLAN dated January 29, 1975.

2. Mr. Nolan purports to be greatly concerned about the consequences of separating the funds in the event that this Court lacks jurisdiction to appoint an umpire or a special master as the petition described him. His concern appears to center about the possibility of potential litigation

instituted at the behest of any disgruntled participants. When the petition was filed upon the direction of the Trustees, the only law applicable then was the Taft-Hartley Law, Section 302 (c) wherein Congress made provision for the appointment of an impartial umpire upon a deadlock occurring among the Trustees. This still remains the only law applicable, I am informed, for the new Employee Retirement Income Security Act of 1974 did not repeal the Taft-Hartley Law and the provisions embraced therein for the appointment of an impartial umpire on the happening of a deadlock. The two Employer Trustees and one of the Union Trustees are all in agreement that the Trustees could not agree upon a single individual as their respective affidavits spell out. That is a dead lock of the first order, the selection of a person agreeable to a majority of the Trustees. The Employer Trustees expressed their view that they would not agree upon any person, other than the one appointed by the Court.

3. This is understandable when the size of the Funds in dollar value is considered, in addition to the many legal and actuarial problems with which the umpire or special master will be confronted. Being businessmen, these Employer Trustees have an abiding faith in this Court as I have and in the person

designated by this Court to referee or umpire the differences between the two Employer Trustees and the one Union Trustee on one side, and the remaining Union Trustee on the other. The Trustees are not endeavoring to confer jurisdiction on this Court, other than through the means provided for in the Taft-Hartley Law, and there is the existence of a deadlock on many issues, but more particularly at the onset of a person agreeable to a majority of the Trustees.

4. Mr. Gerosa and his Attorney have repeatedly stated that there is no need for a charade to pretend that a designated person does not meet their approval. What they have stated is that they do not have to make an offer of a designation and then await the approval or rejection. They have stated that no one is acceptable other than the person designated by this Court. This is what Mr. Robke of the General Contractors Association has stated as the other Employer Trustee. My view is similar that no one person could be advanced as a potential umpire that would meet with my approval. I, too, look to this Court for the designation of a person who will act as the impartial umpire or special master.

Mr. Nolan, in his letter to Mr. Maguire demanding certain changes and alleging certain differences existing in the administration of the Pension Fund, especially, states that

he will seek a "separation" of the Funds if these demands are not met. There was no intent in Mr. Nolan's letter to "terminate" the Funds and liquidate them and divide the remainder among the participants and hence, this use of the word "termination" is a misnomer.

Actually, the separation of the Funds sought herein represents merely the allocation of a portion of the corpus to the credit of the members of the respective local unions. At the present time, the Welfare and Pension Funds are qualified by the Internal Revenue Service as tax exempt organizations. Hence, it would be appropriate to retain the existing Trust Agreement and Plan, as tax exempt organizations, with amendments indicating that the corpus has been split into four separate groups, a Welfare and Pension Fund to Local 14 and a Welfare and Pension Fund to Local 15. Should the Internal Revenue Service approve of this method, then the Funds would not lose their status as "qualified plans" and retain their tax exempt status.

5. A third reason assigned by Mr. Nolan for his motion to dismiss the Petition is the biased slant of the petition drawn up by Mr. Corcoran. There is no basis for the conclusory statement by Mr. Nolan and it is interesting to note that he fails to demonstrate to this Court any "biased slant" in

favor of Local 15. He seeks to buttress his faulty argument by stating that "we now find that Mr. Brady, a member of Mr. Corcoran's firm, is representing Local 15 in this action". Mr. Nolan hastens to add that "I do not question the integrity of Messrs. Corcoran and Brady". And well he might, for I am informed that Mr. Corcoran represented some officers and members of Local 14 in their personal business over the past twenty-five years.

Each of the Trustees was authorized to engage counsel to protect the interests of their respective clients and Local 15 was free to choose its own attorney. Mr. Nolan comes with ill grace to charge a biased slant in favor of Local 15 when the history of these funds show that Mr. Corcoran has acted faithfully as a neutral attorney for the entire Board of Trustees for close to a quarter of a century.

6. The balance of the argument set forth in Mr. Nolan's affidavit under paragraphs 5, 6, 7 and 8 add nothing to his position other than to demonstrate how far apart the two Union Trustees are with respect to the claims made by each side.

These differences point up the inability of the Trustees to agree even upon basic items, let alone the selection of an impartial umpire. Finally, Mr. Nolan on the top of page 7 of his affidavit, asserts one of the principal reasons he wants to separate the funds, is to have the pension and welfare benefits proceed on a multilevel plane so as to compensate members in proportion to the amount each individual paid in. Local 14 would seek to benefit from this unequal distribution of the Funds' assets, having in mind that the contributions to these funds are made on a 4 to 1 ratio inasmuch as the membership of Local 15 exceeds that of Local 14 by 4 to 1. Hence, the total aggregate of contributions would be made by members of Local 15 who would receive a lesser welfare and pension benefit. In some cases, members of both Local 14 and Local 15 would be disenfranchised as they would not meet the minimum annual earnings required for eligibility on a multi-level basis. Actuaries and others familiar with the working with pension funds, know very well the ability of an organization to fund pension benefits depends on the gross amounts received into the Fund. I have been informed by

the special actuary engaged by Local 15 that absent the moneys contributed by members of Local 15, the present high pension benefits paid to members on retiring today would be impossible of attainment. Yet, the multi-level plan of Mr. Nolan for his members would deprive members of Local 14 and Local 15 of pension benefits if they failed to meet the minimum annual rate of employer contributions on their behalf. This is a result which I, representing the members of Local 15 and those who work under its jurisdiction wish to avoid. To benefit the few with high rates of employer contributions, at the expense of the majority whose earnings in the aggregate have made Local 14-15 Pension Funds one of the best in the construction industry, is not my sense of equity or justice. This is especially true when the actuaries read the numbers, showing the ratio of contributions to the Joint Funds to be on a basis of 4 to 1 in favor of Local 15 by reason of their better than 4 to 1 membership. I say, you cannot have your "cake and eat it", too.

WHEREFORE, I respectfully joinwith the two Employer Trustees in requesting that the Motion to Dismiss the Petition

SUR-REPLY AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION

to have this Court appoint an impartial umpire in the form of a Special Master be denied.

/s/ Thomas A. Maguire

THOMAS A. MAGUIRE
Union Trustee

Sworn to before me this

19th day of February 1975

/s/ Sylvia Palumbo

NOTARY PUBLIC

State of Florida at Large
My Commission expires Apr. 5, 1976
Bonded thru General Insurance Underwriters

SUR-REPLY AFFIDAVIT OF THOMAS A. MAGUIRE IN OPPOSITION TO MOTION

TO: DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attorneys for Local Unions 14 and 14B, AFL-CIO
and THOMAS J. NOLAN, as Trustee of the
JOINT WELFARE FUND and the JOINT PENSION FUND,
INTERNATIONAL UNION OF OPERATING ENGINEERS
1461 Franklin Avenue
Garden City, New York, 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee ROBKE
330 Madison Avenue
New York, N. Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attys. for Trustee GEROSA
800 Third Avenue
New York, N. Y. 10022

MEMORANDUM ORDER OF JUDGE WARD APPOINTING A SPECIAL MASTER AND DIRECTING SETTLEMENT OF ORDER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

74 Civ. 2887
R.J.W.

----------x

Petitioners, who include all but one of the Trustees of the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C and 15D (hereinafter collectively referred to as the "Trustees" of the "Joint Funds") seek to have this Court appoint a Special Master in accordance with §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5), for the purpose of dividing those funds into new funds to be managed on behalf of Local 14 and Local 15 separately rather than jointly. The Trustee representative of Local 14 has moved to dismiss the petition.

Members of Locals 14 and 15 have historically worked side by side on the same construction projects. When they adopted their welfare and pension benefit plans, in 1950 and 1956 respectively, they determined to combine the employer

MEMORANDUM ORDER OF JUDGE WARD APPOINTING A SPECIAL MASTER AND DIRECTING SETTLEMENT OF ORDER

and employee contributions of both locals into one pension fund and one welfare fund for the benefit of all employees, thereby gaining a larger pool of assets and unified management. Recent political disputes have caused the Trustees to agree that the Joint Funds should be divided equitably and henceforward administered separately for the benefit of the members of Local 14 and Local 15. The present value of the funds is some $36 million.

The Trustees, with the exception of the representative of Local 14, have determined that it will be impossible for them to formulate a plan for the division of the funds because of fundamental differences in positions concerning the portion due to the members of each Local. They have also determined that they are unable to agree on a panel, or on a single individual, to whom they can entrust the equitable division of the funds. They consider this a deadlock concerning administration within the meaning of §302(c) of the Taft-Hartley Act, 29 U.S.C. §186(c), and have petitioned the Court to appoint a Special Master.

The Trustee representative of Local 14 disagrees with this course of action. He claims that since enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001 et seq., this Court no longer has jurisdiction to appoint a master under the Taft-Hartley Act unless and until

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there is compliance with certain requirements of ERISA. Alternatively, he argues that there is no deadlock within the meaning of §302(c) of the Taft-Hartley Act, and that therefore the Court may not appoint a Master.

§4043 of ERISA, 29 U.S.C. §1343, requires the administrator of any plan covered by the Act to file with the Pension Benefit Guaranty Corporation ("PBGC") established pursuant to the Act a notice of termination, prior to the termination of any employee welfare benefit plan or employee pension benefit plan. The word "termination" is nowhere defined in the Act. Movant contends that division of the funds is a termination, in the sense that they will no longer exist as the entities they now are, and that until such a notice is filed this Court cannot appoint a Master.

The other Trustees argue that the proposed division of assets is not a termination of the funds, since they will continue to exist, to collect contributions and pay out benefits on the same basis as before, although administered as four pools of assets rather than two. They claim that the termination provisions of ERISA, §§4041 et seq., 29 U.S.C. §§1341 et seq., address a dissolution of plans with immediate payout to the employees of their vested shares in the accumulated assets. If their proposed action is treated at all in ERISA, they contend, it is a transfer of assets to another plan, within the meaning of §208, 29 U.S.C. §1058. §208, which establishes standards to govern such a transfer, does not become

effective until after December 31, 1975. §211(b)(1), 29 U.S.C. §1061(b)(1). And in any event, they argue, since the plans here are multi-employer plans, they are not governed by the termination provisions of ERISA until January 1, 1978. §4082(c)(1), 29 U.S.C. §1381(c)(1).

To this, movant responds that the provisions of ERISA which require reporting of certain events, including terminations and transfers, took effect on its date of enactment, so that this Court still may not act until the PBGC is notified of the proposed division of the funds.

As a threshold matter, this Court can find no language in ERISA which expressly repeals §302 of the Taft-Hartley Act. Unless some specific provision of the new Act is incompatible with its exercise of jurisdiction under the Taft-Hartley Act, it considers its function under the latter to be unchanged.

Careful examination of ERISA and consideration of the facts in this case persuades the Court that the proposed division of funds is more nearly a transfer of assets within the meaning of §208, than a termination of plan within the meaning of §§4041 et seq. §208 is based on the premise that employees and employers will continue to make contributions to plans for the employees' benefit, although the plans may be in different forms. It attempts to guarantee that such a change will not in any way reduce the benefits available to

the employees. Sections 4041 et seq., on the other hand, contemplate dissolution of existing plans, cessation of employer and employee contributions and payment of benefits for claims under the plan, and liquidation and distribution of assets to employees in accordance with their respective vested interests. It attempts to ensure that, in this event, employees will receive such amounts as have vested in them by virtue of their contributions to the fund up to that time.

Therefore, if ERISA governs this proposed division at all, it does so pursuant to §208, effective only after December 31, 1975. Moreover, the Court can find nothing in that section to prevent it from appointing a Special Master pursuant to §302(c) of the Taft-Hartley Act.

Section 302(c) permits the district court to appoint a neutral person to resolve an issue of administration of an authorized pension or welfare fund, should the trustees of that fund be deadlocked upon that issue, and unable to agree upon appointment of a neutral person of their own choosing.

On November 1, 1974, this Court instructed the Trustees, through their counsel, to make every effort to agree upon a person who could equitably divide the assets of the funds, so that the funds could be administered separately on behalf of the members of each Local. Since that time there has been no progress whatsoever toward that end, and the only point of agreement among any of the Trustees is that

MEMORANDUM ORDER OF JUDGE WARD APPOINTING A SPECIAL MASTER AND DIRECTING SETTLEMENT OF ORDER

only the Court can select a person who would be acceptable to all. The Trustee representative of Local 14 alone opposes this step. As a final argument, he attempts to persuade the Court that there is no deadlock, thereby, in the Court's view, merely compounding the irreconcilable differences among the Trustees. After reading the papers supporting and opposing the instant motion and hearing oral argument, the Court is convinced that there is no possibility that the Trustees will be able to agree upon a person to divide the funds and ensure continued equitable administration.

Accordingly, the Court will appoint a Special Master for the purpose of preparing a plan for submission to the Court which will equitably divide the funds.

As the Court reads §4043(b)(8) of ERISA, 29 U.S.C. §1343(b)(8), such a plan would be reportable to the PBGC as a transfer of assets under §208 of the Act, if §208 were presently in effect. At the present time, the Court does not consider such a report mandated. However, since the clear intention of Congress in enacting ERISA was to protect employees from any erosion of their rights under welfare and pension plans, the Court will direct that the PBGC be given notice and an opportunity to comment, upon the appointment of a Special Master, and upon any plan which, after hearings and deliberation, he may propose.

MEMORANDUM ORDER OF JUDGE WARD APPOINTING A SPECIAL MASTER AND DIRECTING SETTLEMENT OF ORDER

The motion to dismiss the petition made on behalf of the Trustee representative of Local 14 is denied, and the petition to appoint a Special Master under Rule 53(b), Fed. R. Civ. P., is granted.

Settle order on ten days' notice to all counsel and to the PBGC.

Dated: March 6, 1975

Robert E. Ward
U. S. D. J.

NOTICE OF SETTLEMENT OF LOCAL 15 PROPOSED ORDER
OF MARCH 13, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In the Matter of the Petition of the Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master pursuant to Title 29 U.S.C., Section 186 (c)(5)	Index No. 74 Civ. 2887 (R.J.W.)
	NOTICE OF SETTLEMENT

----------X

PLEASE TAKE NOTICE that the within Order will be submitted for settlement in the Office of the Clerk of this Court, United States District Court, Southern District of New York, Foley Square, New York, N. Y. 10007, on the 26th day of March 1975.

Dated: March 13, 1975

CORCORAN AND BRADY
Attorneys for Board of Trustees
Joint Welfare and Pension Funds
Locals 14-15, International
Union of Operating Engineers
11 Park Place
New York, New York 10007
Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

NOTICE OF SETTLEMENT OF LOCAL 15 PROPOSED ORDER
OF MARCH 13, 1975

TO:

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attorneys for Local Unions 14 and 14B, AFL-CIO
and THOMAS J. NOLAN, as Trustee of the
JOINT WELFARE FUND and the JOINT PENSION FUND,
INTERNATIONAL UNION OF OPERATING ENGINEERS
1461 Franklin Avenue
Garden City, New York 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee ROSKE
330 Madison Avenue
New York, N. Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attys. for Trustee GEROSA
800 Third Avenue
New York, N. Y. 10022

PENSION BENEFIT GUARANTEE CORP.
Box 7119
Washington, D.C. 20044

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NOTICE OF SETTLEMENT OF LOCAL 15 PROPOSED ORDER
OF MARCH 13, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In the Matter of the Petition of the Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master pursuant to Title 29 U.S.C., Section 186(c)(5)

: Index No. 74 Civ. 2887

: (R.J.W.)

: ORDER DENYING MOTION TO DISMISS PETITION AND GRANTING PETITION FOR APPOINTMENT OF SPECIAL MASTER UNDER RULE 53(b)

----------X

This cause came on to be heard on motion of Local 14, 14B, International Union of Operating Engineers, AFL-CIO, and Thomas J. Nolan, as Trustee of the Joint Welfare Fund and the Joint Pension Fund, Locals 14, 14B, 15, 15A, 15C, 15D, International Union of Operating Engineers, to dismiss the proceeding on the ground that the Court lacks jurisdiction over the subject matter (29 U.S.C. 186(c)(5)(c) and on the further ground that the Petitioners herein have failed to comply with the provisions of the Employee Retirement Income Security Act (ERISA) and the Court having rendered a decision dated March 6, 1975 denying the motion to dismiss the Petition made on behalf of the Trustee representative of Local 14 and granting the Petition for the appointment of a Special Master under Rule 53 (b) Fed. R. Civ. P., it is hereby

NOTICE OF SETTLEMENT OF LOCAL 15 PROPOSED ORDER
OF MARCH 13, 1975

ORDERED, ADJUDGED AND DECREED that the Motion to dismiss the Petition is denied and; it is further

ORDERED, ADJUDGED AND DECREED that the Petition for the appointment of a Special Master under Rule 53(b) is granted and; it is further

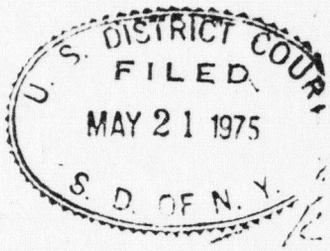
ORDERED, ADJUDGED AND DECREED that this Order shall be settled on ten days notice to all Counsel and to the Pension Benefit Guarantee Corporation.

Dated: March 13, 1975

_____

CLERK

ORDER APPOINTING SPECIAL MASTER WILLIAM J. MOORE.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In the Matter of the Petition of the Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master pursuant to Title 29 U.S.C., Section 186 (c)(5)

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Index No.
74 Civ. 2887(RJW)

COUNTER
ORDER

This cause having come on to be heard on motion of Local 14, 14B, International Union of Operating Engineers, AFL-CIO, and Thomas J. Nolan, as a Trustee of the Joint Welfare Fund and the Joint Pension Fund, Locals 14, 14B, 15, 15A, 15C, 15D, International Union of Operating Engineers, to dismiss the Petition herein on the ground that the Court lacks jurisdiction over the subject matter (29 U.S.C. 186 (c)(5)(c)), and on the further ground that the Petitioners herein have failed to comply with the provisions of the Employee Retirement Income Security Act (ERISA), and this Court (Ward J.) having rendered a decision in writing dated March 6, 1975 denying the motion to dismiss the Petition made on behalf of the Trustee representative of Local 14 and granting the Petition for the

ORDER APPOINTING SPECIAL MASTER WILLIAM J. MOORE

appointment of a Special Master under Rule 53(b) Federal Rules of Civil Procedure, it is hereby,

ORDERED, that the said motion to dismiss the Petition herein be denied; and it is further

ORDERED, that Petitioners' application for the appointment of a Special Master pursuant to Rule 53(b) of the Federal Rules of Civil Procedure is granted and that WILLIAM J. MOORE, 40 WEST 62ND STREET, NEW YORK, NEW YORK 10023 be and the same hereby is appointed Special Master in such proceeding; and it is further

ORDERED, that pursuant to Rule 53(c) of the Federal Rules of Civil Procedure the Special Master shall preside over the hearings relating to the dissolution of the Joint Pension and Welfare Funds herein for the purpose of preparing for submission to this Court pursuant to Rule 53(c) of the Federal Rules of Civil Procedure equitable plans of division of such Joint Funds which plan of division of the Joint Pension Fund shall follow the procedures set forth in Section 10 of the Joint Pension Plan for such Fund, as voted by the Trustees, in their resolution of June 11, 1974, and the plan of division of the Joint Welfare Fund shall be equitable in all respects; and it is further

ORDERED, that the Pension Benefit Guarantee Corporation

ORDER APPOINTING SPECIAL MASTER WILLIAM J. MOORE

[illegible] and that each corporation be given an opportunity to comment upon the appointment of said Special Master, and upon any plan which, after hearings and deliberation, he may propose.

DATED NEW YORK, N.Y.
26
MAY 21, 1975

Robert J. Ward
UNITED STATES DISTRICT JUDGE

(11)

NOTICE OF MOTION TO MODIFY ORDER OF JUDGE WARD OF MAY 21, 1975 DIRECTING SEPARATION, PURSUANT TO SECTION 10.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)

: Index No. 74 Civ. 2887 (R.J.W.)

: NOTICE OF MOTION

----------X

S I R S :

PLEASE TAKE NOTICE that the undersigned will move this Court, through the HON. WILLIAM J. MOORE, SPECIAL MASTER at 140 West 62nd Street, New York, N.Y. 10023, on the 8th day of October 1975 at ten o'clock in the forenoon of that day, for an Order, pursuant to Rule 61, F.R.C.P., modifying the Order of this Court dated and entered May 21, 1975, to the extent of eliminating therefrom the direction that the Plan of division of the Joint Pension Fund shall follow the procedures set forth in Section 10 of the Joint Pension Plan for such Fund and in lieu therefore, direct that the Plan of division of said Joint Pension Fund shall be equitable in all respects, with appropriate notice to the PENSION BENEFIT GUARANTEE CORP. to allow it to comment on any Plan, which after hearings and

deliberation, the Special Master may propose and recommend, and for such other and further relief as may be just in the premises.

Dated: New York, N. Y., September 25, 1975

Yours, etc.

CORCORAN AND BRADY
Attorneys for the Trustees of the
JOINT PENSION FUND, LOCALS 14,
14B, 15, 15A, 15C, 15D, AFL-CIO
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO
11 Park Place
New York, New York 10007
Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

NOTICE OF MOTION TO MODIFY ORDER OF JUDGE WARD OF MAY 21, 1975
DIRECTING SEPARATION, PURSUANT TO SECTION 10

COPIES TO:

Clerk, United States District Court
Southern District of New York
Foley Square
New York, New York 10007

HON. WILLIAM J. MOORE, Special Master
140 West 62nd Street
New York, N. Y. 10023

PENSION BENEFIT GUARANTEE CORP.
P.O. Box 7119
Washington, D. C. 20044

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attorneys for Local Unions 14 and 14B, AFL-CIO
and THOMAS J. NOLAN, as Trustee of the
Joint Pension Fund, International Union of
Operating Engineers
1461 Franklin Avenue
Garden City, New York 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee Robke
330 Madison Avenue
New York, N. Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attorneys for Trustee Gerosa
800 Third Avenue
New York, N. Y. 10022

ROBERT D. BRADY, ESQ.
Attorney for Local Union 15,
AFL-CIO and THOMAS A. MAGUIRE
as Trustee of the Joint Pension Fund,
International Union of Operating Engineers
11 Park Place
New York, N. Y. 10007

AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	Index No. 74 Civ. 2887 (R.J.W.) AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. CORCORAN, being duly sworn, deposes and says:

1. I am the Attorney for the Board of Trustees of the Joint Welfare and Joint Pension Fund, Locals 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, International Union of Operating Engineers and am familiar with the facts contained herein.

2. Upon the denial of the Motion to dismiss the Petition, the Court in its decision dated March 6, 1975 directed Counsel to settle order on ten days notice to all Counsel and the Pension Benefit Guarantee Corp. An order, in conformity with the Court's decision was submitted on behalf of the Petitioners, Exhibit A, and a Proposed Counter Order was submitted by the Attorneys representing Local 14 and its Trustee, Exhibit B.

3. The Court signed the Counter Order appointing WILLIAM J. MOORE, ESQ. to be the Special Master and ordered that the Plan of Division of the JOINT PENSION FUND, shall follow the procedures set forth in Section 10 of the Joint Pension Plan for such Fund, as voted by the Trustees in their resolution of June 11, 1974 and that the Plan of Division of the Joint Welfare Fund shall be equitable in all respects.

4. For the purpose of relief sought herein, this Motion applies solely to the division of the JOINT PENSION FUND, inasmuch as Section 10, pertaining to termination appears only in the Pension Plan and not in the Welfare Plan.

5. Although the Court was dealing with both Funds with respect to their division, it was only dealing with the PENSION FUND insofar as Section 10 is applicable.

6. The full impact of the procedures set forth in Section 10, as to the division of the JOINT PENSION FUND was discerned for the first time at the second meeting of Counsel and Actuaries before the Special Master at his office on July 11, 1975. It was at this meeting that the Plan of Division as put forth by Martin Segal and Company, on behalf of Local 14 and its Trustee, was made known to Counsel for the parties and to a majority of the Actuaries. In its Plan of Division, Martin Segal & Company follows the plan of Termination as outlined in Section 10. Of course, the disclosure of this plan

at this hearing made it apparent and obvious that the decision of JUDGE WARD was not being followed, who stated that the Funds were to be separated into four (4) separate funds on an equitable basis.

The Plan of Segal & Company, by taking care of only those already on Pension and those participants who would be immediately eligible as being of age 62 with 15 years of credited service, would cause a disfranchisement of 4,000 to 5,000 members of both Local Unions 14 and 15, respectively.

Each of the attorneys and actuaries present, representing all the Parties and Trustees, other than Local 14 and its Trustee, were of the opinion that Section 10 of the Pension Plan could not be used as it was inconsistent with JUDGE WARD's decision of March 6, 1975, wherein he stated at Page 6

> "Accordingly, the Court will appoint a Special Master for the purpose of preparing a plan of submission to the Court which will equitably divide the Funds."

7. Three of the four Actuaries retained by the various parties were quick to point out this inconsistency with the Court's findings and rationale as set forth in its decision which would be directly contradicted by Section 10 of the Pension Plan, which pertains solely to termination. The fourth Actuary, Martin Segal & Company, through Messrs. Maresco and

Lacetti, did not express any opinion other than to shrug their shoulders and reply "we are only following the directions of the Court (Section 10).

8. Actually, the resolution referred to in the Minutes of the Trustees, dated June 11, 1974, refer to the termination provisions of the Funds without specifically mentioning Section 10 of the Pension Plan. In any event, the decision of JUDGE WARD directly negates a "termination" and speaks of a division of the Funds. As a matter of fact, Trustee Nolan in his letter requesting a split of the Funds uses thw word "division" rather than termination. The use of words at a Trustees' meeting as reported in the Minutes, do not necessarily have the intent it purports to suggest, particularly when the intent was fully explored in the argument on the Motion to Dismiss the Petition and confirmed by JUDGE WARD in his decision of March 6, 1975. Division rather than termination was both the intent and concept adopted by the Trustees which the Court makes clear in saying four (4) Funds instead of two (2) Joint Funds, which will result upon the division.

9. Section 10 of the PENSION PLAN, of course, does not provide for any fund continuing in the future. Section 10 contemplates only a wind-up, a finish and an end to the Pension Fund. The inclusion of Section 10 in the Court's Order, I believe, was inadvertant, because JUDGE WARD could not

conceivably decide a division of the Pension Fund on an equitable basis and then order a division that would disfranchise between 4,000 and 5,000 participants.

10. The acceptance of the Martin Segal & Company report with its formula based on their interpretation of Section 10 as the Plan of division, would be in complete diametric opposition to the Plan of division contemplated by the Court in its decision denying the Motion to Dismiss the Petition, dated March 6, 1975, Exhibit C.

11. Accordingly, it is clear that refusal to modify the Order of May 31, 1975 to exclude the Plan of Division based on procedures that follow Section 10 of the Pension Plan would result in action which to this Court should appear inconsistent with substantial justice, as mandated by Rule 61 F.R.C.P.

12. On the inherent power possessed by the Court in the fullness of its grant to decide matters in a manner that is most just and equitable, this Court can and should modify its Order of May 31, 1975 on the ground that it is inconsistent with and contradictory of the Court's decision.

WHEREFORE, it is respectfully prayed that the Special Master consider, on the basis of reports of three of the four Actuaries, and on the apparent inconsistency of the Order dated May 31, 1975 with the Court's decision of March 6, 1975, that

the Special Master recommend to the Court the modification of its Order of May 31, 1975 to the extent of eliminating therefrom the direction that the Plan of division of the Joint Pension Fund follow the procedures set forth in Section 10 of the Joint Pension Plan and ordering that the Plan of Division follow the plan that will make for an equitable division in all respects, and that the Pension Guarantee Benefit Corporation be served with a copy of the revised Order and be given the opportunity to comment on the Plan of Division which after hearings and deliberations may be proposed and recommended by the Special Master, and that the Board of Trustees have such other and further relief as may be just in the premises.

William J. Corcoran

WILLIAM J. CORCORAN
CORCORAN AND BRADY
Attorneys for Trustees
of the Joint Pension Fund,
Locals 14,14B,15,15A,15C,
15D, AFL-CIO, INTERNATIONAL
UNION OF OPERATING ENGINEERS,
AFL-CIO
11 Park Place
New York, N.Y. 10007

Sworn to before me this
25th day of September 1975

Robert D. Brady

NOTARY PUBLIC

ROBERT D. BRADY
Notary Public, State of New York
No. 60-5419397
Qualified in Westchester County
Commission Expires March 30, 1976

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In the Matter of the Petition of the Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master pursuant to Title 29 U.S.C., Section 186(c)(5)	:	Index No. 74 Civ. 2887 (R.J.W.) ORDER DENYING MOTION TO DISMISS PETITION AND GRANTING PETITION FOR APPOINTMENT OF SPECIAL MASTER UNDER RULE 53(b)

----------X

This cause came on to be heard on motion of Local 14, 14B, International Union of Operating Engineers, AFL-CIO, and Thomas J. Nolan, as Trustee of the Joint Welfare Fund and the Joint Pension Fund, Locals 14, 14B, 15, 15A, 15C, 15D, International Union of Operating Engineers, to dismiss the proceeding on the ground that the Court lacks jurisdiction over the subject matter (29 U.S.C. 186(c)(5)(c) and on the further ground that the Petitioners herein have failed to comply with the provisions of the Employee Retirement Income Security Act (ERISA) and the Court having rendered a decision dated March 6, 1975 denying the motion to dismiss the Petition made on behalf of the Trustee representative of Local 14 and granting the Petition for the appointment of a Special Master under Rule 53 (b) Fed. R. Civ. P., it is hereby

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

ORDERED, ADJUDGED AND DECREED that the Motion to dismiss the Petition is denied and; it is further

ORDERED, ADJUDGED AND DECREED that the Petition for the appointment of a Special Master under Rule 53(b) is granted and; it is further

ORDERED, ADJUDGED AND DECREED that this Order shall be settled on ten days notice to all Counsel and to the Pension Benefit Guarantee Corporation.

Dated: March 13, 1975

CLERK

BEST COPY AVAILABLE

EXHIBIT B, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In the Matter of the Petition of the Trustees of the Joint Welfare Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO and the Trustees of the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO for the Appointment of a Special Master pursuant to Title 29 U.S.C., Section 186 (c)(5)

Index No.
74 Civ. 2887(RJW)

COUNTER PROPOSED ORDER

----------X

This cause having come on to be heard on motion of Local 14, 14B, International Union of Operating Engineers, AFL-CIO, and Thomas J. Nolan, as a Trustee of the Joint Welfare Fund and the Joint Pension Fund, Locals 14, 14B, 15, 15A, 15C, 15D, International Union of Operating Engineers, to dismiss the Petition herein on the ground that the Court lacks jurisdiction over the subject matter (29 U.S.C. 186 (c)(5)(c)), and on the further ground that the Petitioners herein have failed to comply with the provisions of the Employee Retirement Income Security Act (ERISA), and this Court (Ward J.) having rendered a decision in writing dated March 6, 1975 denying the motion to dismiss the Petition made on behalf of the Trustee representative of Local 14 and granting the Petition for the

EXHIBIT B, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

appointment of a Special Master under Rule 53(b) Federal Rules of Civil Procedure, it is hereby,

ORDERED, that the said motion to dismiss the Petition herein be denied; and it is further

ORDERED, that Petitioners' application for the appointment of a Special Master pursuant to Rule 53(b) of the Federal Rules of Civil Procedure is granted and that William J. Moore, 140 West 62nd Street, New York, New York 10023 be and the same hereby is appointed Special Master in such proceeding; and it is further

ORDERED, that pursuant to Rule 53(c) of the Federal Rules of Civil Procedure the Special Master shall preside over the hearings relating to the dissolution of the Joint Pension and Welfare Funds herein for the purpose of preparing for submission to this Court pursuant to Rule 53(c) of the Federal Rules of Civil Procedure equitable plans of division of such Joint Funds which plan of division of the Joint Pension Fund shall follow the procedures set forth in Section 10 of the Joint Pension Plan for such Fund, as voted by the Trustees, in their resolution of June 11, 1974, and the plan of division of the Joint Welfare Fund shall be equitable in all respects; and it is further

ORDERED, that the Pension Benefit Guarantee Corporation

EXHIBIT B, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

be given notice of this order and that such Corporation be given an opportunity to comment upon the appointment of said Special Master, and upon any plan which, after hearings and deliberation, he may propose.

DATED NEW YORK, NY
MAY 21, 1975

S/ Robert J. Ward
UNITED STATES DISTRICT JUDGE

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5)

74 Civ. 2987
R.J.W.

Petitioners, who include all but one of the Trustees of the Joint Welfare Fund and the Joint Pension Fund of the International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C and 15D (hereinafter collectively referred to as the "Trustees" of the "Joint Funds") seek to have this Court appoint a Special Master in accordance with §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5), for the purpose of dividing those funds into new funds to be managed on behalf of Local 14 and Local 15 separately rather than jointly. The Trustee representative of Local 14 has moved to dismiss the petition.

Members of Locals 14 and 15 have historically worked side by side on the same construction projects. When they adopted their welfare and pension benefit plans, in 1950 and 1956 respectively, they determined to combine the employer

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

and employee contributions of both locals into one pension fund and one welfare fund for the benefit of all employees, thereby gaining a larger pool of assets and unified management. Recent political disputes have caused the Trustees to agree that the Joint Funds should be divided equitably and henceforward administered separately for the benefit of the members of Local 14 and Local 15. The present value of the funds is some $36 million.

The Trustees, with the exception of the representative of Local 14, have determined that it will be impossible for them to formulate a plan for the division of the funds because of fundamental differences in positions concerning the portion due to the members of each Local. They have also determined that they are unable to agree on a panel, or on a single individual, to whom they can entrust the equitable division of the funds. They consider this a deadlock concerning administration within the meaning of §302(c) of the Taft-Hartley Act, 29 U.S.C. §186(c), and have petitioned the Court to appoint a Special Master.

The Trustee representative of Local 14 disagrees with this course of action. He claims that since enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001 et seq., this Court no longer has jurisdiction to appoint a master under the Taft-Hartley Act unless and until

there is compliance with certain requirements of ERISA. Alternatively, he argues that there is no deadlock within the meaning of §302(c) of the Taft-Hartley Act, and that therefore the Court may not appoint a Master.

§4043 of ERISA, 29 U.S.C. §1343, requires the administrator of any plan covered by the Act to file with the Pension Benefit Guaranty Corporation ("PBGC") established pursuant to the Act a notice of termination, prior to the termination of any employee welfare benefit plan or employee pension benefit plan. The word "termination" is nowhere defined in the Act. Movant contends that division of the funds is a termination, in the sense that they will no longer exist as the entities they now are, and that until such a notice is filed this Court cannot appoint a Master.

The other Trustees argue that the proposed division of assets is not a termination of the funds, since they will continue to exist, to collect contributions and pay out benefits on the same basis as before, although administered as four pools of assets rather than two. They claim that the termination provisions of ERISA, §§4041 et seq., 29 U.S.C. §§1341 et seq., address a dissolution of plans with immediate payout to the employees of their vested shares in the accumulated assets. If their proposed action is treated at all in ERISA, they contend, it is a transfer of assets to another plan, within the meaning of §208, 29 U.S.C. §1058. §208, which establishes standards to govern such a transfer, does not become

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

effective until after December 31, 1975. §211(b)(1), 29 U.S.C. §1061(b)(1). And in any event, they argue, since the plans here are multi-employer plans, they are not governed by the termination provisions of ERISA until January 1, 1978. §4082(c)(1), 29 U.S.C. §1381(c)(1).

To this, movant responds that the provisions of ERISA which require reporting of certain events, including terminations and transfers, took effect on its date of enactment, so that this Court still may not act until the PBGC is notified of the proposed division of the funds.

As a threshold matter, this Court can find no language in ERISA which expressly repeals §302 of the Taft-Hartley Act. Unless some specific provision of the new Act is incompatible with its exercise of jurisdiction under the Taft-Hartley Act, it considers its function under the latter to be unchanged.

Careful examination of ERISA and consideration of the facts in this case persuades the Court that the proposed division of funds is more nearly a transfer of assets within the meaning of §208, than a termination of plan within the meaning of §§4041 et seq. §208 is based on the premise that employees and employers will continue to make contributions to plans for the employees' benefit, although the plans may be in different forms. It attempts to guarantee that such a change will not in any way reduce the benefits available to

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

the employees. Sections 4041 et seq., on the other hand, contemplate dissolution of existing plans, cessation of employer and employee contributions and payment of benefits for claims under the plan, and liquidation and distribution of assets to employees in accordance with their respective vested interests. It attempts to ensure that, in this event, employees will receive such amounts as have vested in them by virtue of their contributions to the fund up to that time.

Therefore, if ERISA governs this proposed division at all, it does so pursuant to §208, effective only after December 31, 1975. Moreover, the Court can find nothing in that section to prevent it from appointing a Special Master pursuant to §302(c) of the Taft-Hartley Act.

Section 302(c) permits the district court to appoint a neutral person to resolve an issue of administration of an authorized pension or welfare fund, should the trustees of that fund be deadlocked upon that issue, and unable to agree upon appointment of a neutral person of their own choosing.

On November 1, 1974, this Court instructed the Trustees, through their counsel, to make every effort to agree upon a person who could equitably divide the assets of the funds, so that the funds could be administered separately on behalf of the members of each Local. Since that time there has been no progress whatsoever toward that end, and the only point of agreement among any of the Trustees is that

only the Court can select a person who would be acceptable to all. The Trustee representative of Local 14 alone opposes this step. As a final argument, he attempts to persuade the Court that there is no deadlock, thereby, in the Court's view, merely compounding the irreconcilable differences among the Trustees. After reading the papers supporting and opposing the instant motion and hearing oral argument, the Court is convinced that there is no possibility that the Trustees will be able to agree upon a person to divide the funds and ensure continued equitable administration.

Accordingly, the Court will appoint a Special Master for the purpose of preparing a plan for submission to the Court which will equitably divide the funds.

As the Court reads §4043(b)(8) of ERISA, 29 U.S.C. §1343(b)(3), such a plan would be reportable to the PBGC as a transfer of assets under §208 of the Act, if §208 were presently in effect. At the present time, the Court does not consider such a report mandated. However, since the clear intention of Congress in enacting ERISA was to protect employees from any erosion of their rights under welfare and pension plans, the Court will direct that the PBGC be given notice and an opportunity to comment, upon the appointment of a Special Master, and upon any plan which, after hearings and deliberation, he may propose.

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

The motion to dismiss the petition made on behalf of the Trustee representative of Local 14 is denied, and the petition to appoint a Special Master under Rule 53(b), Fed. R. Civ. P., is granted.

Settle order on ten days' notice to all counsel and to the PBGC.

Dated: March 6, 1975

Robert L. Ward
U. S. D. J.

BEST COPY AVAILABLE

AFFIDAVIT OF PETER D. STERGIOS IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION INDEX NO. 74 CIV. 2887 (R.J.W.)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER D. STERGIOS being duly sworn, deposes and says:

1. I am an attorney associated with the law firm of SHEA GOULD CLIMENKO KRAMER & CASEY, attorneys for Trustee O'Neil an employer-member of the Board of Trustees of the Joint Welfare and Joint Pension Fund, Articles 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, International Union of Operating Engineers ("Joint Funds"), and am fully familiar with the facts contained herein. I make this affidavit in support of the motion of William J. Corcoran, Esq., modifying the order of this Court dated and entered May 21, 1975.

2. Trustee O'Neil urges that the Joint Funds be separated in a manner most equitable to the beneficiaries. In further-

ance of his responsibilities as Trustee, then Trustee George Robke, predecessor to Trustee O'Neil, engaged an actuarial firm, A.S. Hansen, Inc., which studied the effects of the implementation of Section 10 of the Pension Plan as a method of dividing the Joint Funds. On July 9, 1975, a member of the actuarial firm, David J. Croot, reported that in his opinion the procedures set forth in Section 10, if followed, probably would not result in an equitable division because in effect the Joint Funds would be apportioned on the basis of two classes of participants who represent only about 25% of those covered. The spectre raised is that the assets of the Joint Funds would be allocated without provision for funding for the liabilities represented by a majority of covered employees, although contributions have been made to the Joint Funds on their behalf. It is my understanding that two other actuaries of a total of four involved in this proceeding are in agreement with A.S. Hansen, Inc.

The trustees of the resulting funds will have to adopt one of the vesting options set forth in Section 203 of the Employee Retirement Income Security Act of 1974. Under the minimum vesting requirements, covered employees could become vested with as little as five years' service. Such factors should not be ignored in choosing a method of allocation. Pursuant to a meeting attended by Messrs. Kennedy, Brady, Tabor, Croot, O'Neil, Stergios and Jones on September 19, 1975, calculations have been proposed to test a method of allocation based on five, rather than two, classes of participants. At this time we possess insufficient information to recommend a particular method of distribution, which information should be forthcoming from the actuaries.

3. The Court's decision, page 5, provided for the appointment of a Special Master "for the purpose of preparing a plan for submission to the court which will equitably divide the funds". Even assuming Section 10, contemplating termination of the Joint Funds, provides a logical procedure for the allocation, notwithstanding the Court's finding that we are dealing with a separation rather than a termination, such procedure should not be adopted without a thorough examination of other methods which might prove more in conformity with the principles of equity, given the ongoing responsibility of the Trustees.

Since the purpose of the Court's Order is to facilitate a means by which the Joint Funds can be most equitably separated, it would be inconsistent with such purpose to bind the Special Master to a particular method which may itself prove less equitable than others. It should be within the discretion of the Special Master to examine all reasonable methods for allocating the funds, especially where a method might prove to have a more equitable result than would be obtained by following the formula established by Section 10 of the Plan. Equity, not procedural technicality, should govern.

4. Since the responsibility of the Trustees and the Special Master is to seek the most equitable distribution of the Joint Funds to best protect the interests of all participants, I urge that all methods which might be proposed by the Trustees be considered by the Special Master.

AFFIDAVIT OF PETER D. STERGIOS IN SUPPORT OF MOTION

WHEREFORE, it is requested that the Special Master recommend to the Court that the Court's directive specifying that the division be in accordance with Section 10 of the Plan be deleted from its Order and for such other and further relief as to the Court seems just.

PETER D. STERGIOS

Sworn to before me this
11th day of October, 1975.

DANIEL L. CARROLL
Notary Public, State of New York
No. 41-4500320
Qualified in Queen County
Commission Expires March 30, 1977

AFFIDAVIT OF PETER D. STERGIOS IN SUPPORT OF MOTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Nicoletta Newkirk, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Cliffside Park, New Jersey.

On October 11, 1975, deponent served the within Affidavit in Support of Notice of Motion and Affidavit of Peter D. Stergios, sworn to on October 11, 1975, upon the following at the addresses designated for that purpose by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Clerk, United States District Court
Southern District of New York
Foley Square New York 10007

Hon. William J. Moore, Special Master
140 West 62nd Street
New York, New York 10023

Pension Benefit Guarantee Corp.
P. O. Box 7119
Washington, D.C. 20044

Corcoran and Brady
11 Park Place
New York, New York 10007

Doran, Colleran, O'Hara,
Pollio & Dunne, P.C.
1461 Franklin Avenue
Garden City, New York 11530

Cunningham & Kaming, P.C.
800 Third Avenue
New York, New York 10022

S/
Nicoletta Newkirk

Sworn to before me this
11th day of October, 1975.

S/
DANIEL L. CARROLL
Notary Public, State of New York
No. 41-4500020
Qualified in Queen County
Commission Expires March 30, 1977

AFFIDAVIT OF EDWARD O. ADLER IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION INDEX NO. 74 CIV. 2887 (R.J.W.)

STATE OF NEW YORK)
) SS. :
COUNTY OF NEW YORK)

Edward O. Adler, being duly sworn, deposes and says:

1. I am an attorney associated with the law firm of CUNNINGHAM & KAMING, P.C., attorneys for TRUSTEE GEROSA, an employer member of the BOARD OF TRUSTEES of THE JOINT WELFARE and JOINT PENSION FUND, LOCALS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, INTERNATIONAL UNION OF OPERATING ENGINEERS and am familiar with the facts contained herein.

2. TRUSTEE GEROSA desires that the funds be separated in an equitable manner. It appears that the use of Section X would not be the approach to obtain an equitable solution in the division of the funds.

AFFIDAVIT OF EDWARD O. ADLER IN SUPPORT OF MOTION

3. The court in its decision made it clear that the SPECIAL MASTER was appointed to oversee an equitable division of the funds. In its decision the court limited the MASTER'S power in that the plan recommended by him must be equitable. At page 6 of its decision the court states:

> "Accordingly, the Court will appoint a Special Master for the purpose of preparing a plan for submission to the Court which will equitably divide the funds."

4. The court in its decision defines division and distinguishes that term from termination. At page 4 of its decision the court states:

> "...consideration of the facts in this case persuades the Court that the proposed division of funds is more clearly a transfer of assets within the meaning of §208, than a termination of plan within the meaning of §§4041 et seq. §208 is based on the premise that employees and employers will continue to make contributions to plans for the employees' benefit, although the plans may be in different forms. It attempts to guarantee that such a change will not in any way reduce the benefits available to the employees. Section 4041 et seq., on the other hand, contemplates dissolution of existing plans, cessation of employer and employee contributions and payments of benefits for claims under the plan, and liquidation and distribution

of assets to employees in accordance with their respective vested interests."

Section X is a termination provision and not a provision that is applicable to division; thus it should not be used in this instance.

5. Three of the four actuaries employed in the instant case apparently agree that the application of Section X to the separation of the funds involved herein would not produce an equitable result. Furthermore, each has indicated that the use of Section X in making the division would create substantial problems both as to distribution of joint funds and funding the new separate funds.

6. The purpose and the objective of the TRUSTEES in petitioning the Court and in the Court's appointment of a SPECIAL MASTER was to arrive at an applicable distribution of the JOINT FUNDS and to afford protection to both the participants of the FUNDS and the TRUSTEES OF THE FUNDS. It was not the intention of the TRUSTEES that the termination provisions of the plans should be applied without regard to what would result in an equitable division. Use of Section X as proposed would apparently not satisfy these purposes and concerns.

AFFIDAVIT OF EDWARD O. ADLER IN SUPPORT OF MOTION

WHEREFORE, it is respectfully prayed that the SPECIAL MASTER recommend to the Court that the directive of the Court concerning use of Section X procedures be deleted from its order, and for such other and further relief as to the Court seems just.

Edward O Adler

Edward O. Adler
CUNNINGHAM & KAMING, P.C.
Attorneys for Trustee Gerosa
800 Third Avenue
New York, New York 10022

Sworn to before me this
7th day of October, 1975

Beatrice Schiavone

BEATRICE SCHIAVONE
Notary Public, State of New York
No. 03-8005785
Qualified in Bronx County
Commission Expires March 30, 1976

AFFIDAVIT OF EDWARD O. ADLER IN SUPPORT OF MOTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS. :

Mary Winer, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in the Borough of Queens.

On October , 1975 deponent served the within Affidavit in Support of Notice of Motion and Affidavit of Edward O. Adler, sworn to . ,upon the following at the addresses designated for that purpose by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper, in a post office official depository under the exlusive care and custody of the United States Postal Service within the State of New York:

Clerk, United States District Court
Southern District of New York
Foley Square, New York 10007

C
Corcoran and Brady
11 Park Place
New York, New York 10007

Hon. William J. Moore, Special Master
140 West 62nd Street
New York, New York 10023

Pension Benefit Guarantee Corp.
P.O. Box 7119
Washington, D.C. 20044

Doran, Colleran, O'Hara
Pollio & Dunne, P.C.
1461 Franklin Avenue
Garden City, N.Y. 11530

Shea, Gould, Climenko &
Kramer, Esqs.
330 Madison Avenue
New York, N.Y. 10017

Robert D. Brady, Esq.
11 Park Place
New York, N.Y. 10007

Mary Winer

Sworn to before me this
7th day of October, 1975

Beatrice DeNavone

BEATRICE DENAVONE
Notary Public State of New York
No. 03-8807725
Qualified in Bronx County
Commission Expires March 30, 1976

AFFIDAVIT OF RICHARD L. O'HARA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5).

Docket No.
74 Civ. 2887

AFFIDAVIT

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STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

RICHARD L. O'HARA, being duly sworn, says:

1. I am a member of the firm of Doran, Colleran, O'Hara, Pollio & Dunne, P.C., attorneys for Local 14 of the International Union of Operating Engineers and Thomas J. Nolan, as a Trustee of the Joint Pension and Welfare Funds of Locals 14 and 15. I make this affidavit in opposition to the within application to modify that portion of the Order of this Court dated May 27, 1975 which directed that the Joint Pension Fund be separated pursuant to the procedures set forth in Section 10 of the Joint Pension Plan. Specifically I direct my attention to Mr. Corcoran's correspondence of October 22, 1975, and enclosures, which were submitted to show that the method of dissolution espoused in Section 10 was an inequitable method thereby war-

ranting a modification of the order under which the dissolution is to be effected.

2. A review of the papers submitted by Local 15 to document their charges that Section 10 of the Joint Pension Plan is an inequitable method of dissolution, merely verifies Local 14's position that in fact Section 10 is an acceptable and equitable method of dissolution. Local 15 and Messrs. Corcoran and Brady initiated the instant motion on the grounds that a gross inequity would result if Section 10 were utilized to split the Joint Pension Fund. There were forebodings of countless thousands of participants being "disenfranchised" by the use of Section 10. When it became apparent that these charges could not withstand close scrutiny, the approach changed to one of let's find a more representative method. Forced to finally proffer a method of dissolution, with actuarial calculations, Mr. Corcoran submitted his unsworn correspondence of October 22nd.

3. A contribution method was suggested first which according to the unsworn statements of Mr. Corcoran and Mr. Tabor demonstrated that Section 10 was inequitable. In a Fund that has existed since 1956, the actuary takes contribution figures from 1971 through 1973 of active participants. Clearly everything that went on for the prior fifteen (15) years had been ignored. Since we have a system of unfunded liabilities, the major portion of the present corpus is earmarked to pay off past liabilities.

The methodology offered in Table 1 will effectively ignore all these past credits. Any relationship between the result obtained by such a method and an equitable split of this Fund could only be through coincidence, a turn of events which hasn't happened in Table 1.

4. A further problem with Table 1 is the inexplicable loss of 10% of the membership of Local 14. There is no indication in Mr. Tabor's commentary why there should be such a disparity in membership figures in this new methodology. It does not appear that explanation can be made merely on the basis of a shift in the base year from 1972 to 1973. A loss of this magnitude just does not occur in a one year interim. Moreover, if it did 1973 could hardly be construed a proper base year.

5. Even Mr. Tabor quickly disregarded Table 1 and moved to what he termed "a more equitable approach", a present value of liabilities approach contained in Table 2. It was the consensus of Mr. Faggen and Mr. Tabor that the "liabilities approach" was the preferred method over the "contributions approach". The "liabilities approach" resulted in a suggested 65-35 split in favor of Local 15 and it could only do so after every assumption upon which the present Fund is based was arbitrarily changed. I cannot comprehend how Local 15 or its actuaries can justify a unilateral change of assumptions from the assumptions under which the present Fund has been operating all these years. They are

playing actuarial games and changing the rules as they go along. They are completely disregarding the realities underlying these assumptions. A new set of rules was mailed to our office in the latter part of September. I enclose a copy for the Court's convenience. (Exhibit A). Nowhere in Tables 1 and 2, or in the running commentary, is it made clear how these assumptions were used, why, and what disparity in effect was accomplished. We have merely a list of results. Yet with all these favorable changes, with the excision of 10% of the membership of Local 14, Mr. Corcoran has only managed to produce a methodology which varies from the Section 10 approach by five percentage points.

6. It is particularly outrageous that Mr. Corcoran should use this Court as a vehicle to obtain a negotiating stance. With cries of disenfranchisement and suggestions of overreaching on the part of the attorneys for Local 14, it now develops that a gross inequity can be rectified by a switch of 5%.

7. It is clear that before a Court will modify an order, good cause must be shown for the court to exercise its discretion. In the present situation it would have been necessary for Local 15 to show a disparity in result sufficient to convince a court that the utilization of Section 10 would have caused a grave injustice to the participants and pensioners belonging to Local 15. Even after shifting every actuarial assumption in its favor Local 15 has failed to make such a showing.

Local 14 could offer no greater proof of the fairness of the Section 10 approach, a method unanimously voted on by the Trustees and accordingly incorporated in the Court's order, than the alleged "actuarial plans" submitted by Local 15.

8. In discussing the question of equitable solutions, it should be pointed out that in August of this year, Local 14 concluded its negotiations with the various associations representing employers. Such negotiations resulted in agreements in which the employers agreed to make contributions to the new Local 14 Pension Fund of 65¢ per hour per employee for hours worked. The negotiations and the agreement concluded on Local 14's behalf were based in large part on the assumption that the amount of the corpus of the new Local 14 Pension Fund would consist of a portion of the assets of the old Joint Fund as divided by the Court pursuant to Section 10. During the period of time prior to the commencement of such negotiations with the employers' associations and during such negotiations, up to and including the consummation of such agreement, Local 14 assumed that the Court ordered separation of the Fund would be in accordance with Section 10. To now change that assumption would threaten the continuing viability of the new fund. Suggestion has been made that Local 14 was or should have been mindful of Local 15's dissatisfaction with Section 10 in early July 1975 and prior to the conclusion of negotiations. The fact of the matter is that this motion was instituted subsequent to the date that

negotiations were concluded. Negotiations could not have been left open any longer. Moreover, at the time of negotiations, there appeared to be no obstructions which would jeopardize the use of Section 10. That position has been borne out by this motion and Petitioners' inability to offer any evidence indicating inequity resulting from the use of Section 10.

WHEREFORE, it is respectfully requested that this motion be denied in all respects and that the dissolution of the Joint Pension Fund proceed as heretofore directed, pursuant to the procedures set forth in Section 10 of the Joint Pension Plan, together with such other and further relief as to this Court may seem just and proper.

Richard L. O'Hara

RICHARD L. O'HARA

Sworn to before me this
31st day of October, 1975.

Robert J. Aurigema

ROBERT J. AURIGEMA
NOTARY PUBLIC, State of New York
No. 30-4605657
Qualified in Nassau County
Commission Expires March 30, 1977

EXHIBIT A, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA.

M E M O R A N D U M

September 19, 1975

ACTUARIAL ASSUMPTIONS TO BE USED IN CALCULATING THE PRESENT VALUE OF LIABILITIES UNDER THE JOINT PENSION FUND

At a meeting on September 19, 1975 attended by Messrs. O'Neill, Stergios, Kennedy, Tabor, Croot, Brady and Jones, it was agreed, subject to checking by Mr. Kennedy with Local 14's actuaries that Mr. Tabor would prepare a calculation based on 1973 census data which would show the present value, as of the 1973 calculation date, of liabilities for the following classes of individuals, by Union:

1. Retired
2. Age 62 and 15 years of service
3. 15 years of service but not yet 65

4A 10 years of service

4B Less than 10 years of service

The various assumptions to be used for the first run would be as follows:

ASSUMPTIONS BY CLASS

Class	1.	2.	3.	4A	4B
Interest:	9%	8%	7%	5%	5%
Mortality:	GA-80 as to retired lives for all classes; GA-51 for years up to retirement for all classes except 1.				
Retirement Age:	Actual	1 year after valuation date	63	63	63
Turnover:	T-5 before retirement; T-0 after				
Morbidity:	No special factor; deemed to be included in turnover rate				

EXHIBIT A, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA

Mr. Tabor thought that the 1973 census data could be completed to the satisfaction of all by September 26, and that it would take up to four weeks thereafter to produce by classes the proposed dollar liability figures.

The possibility or producing other figures based on 1972 census data, or using different assumptions, was mentioned. Mr. Tabor indicated that he may produce figures based on a flat 5% interest assumption for all classes of covered employees.

This memorandum has been prepared in accordance with the request of all those in attendance at the meeting.

EMJ:bn

AFFIDAVIT OF CHARLES MARESCA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5).

Docket No.
74 Civ. 2887

AFFIDAVIT

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STATE OF NEW YORK)
)ss.:
COUNTY OF ROCKLAND)

CHARLES MARESCA, being duly sworn, says:

1. I am Senior Vice President of Martin E. Segal Company, the actuarial firm engaged by Local 14 and Trustee Thomas J. Nolan to aid in the dissolution of the Joint Pension Fund and Joint Welfare Fund of Locals 14, 14B, 15, 15A, 15C and 15D, International Union of Operating Engineers, AFL-CIO. I make this affidavit in response to the actuarial material which has been recently submitted to the Special Master by Tolley International and by Mr. Faggen to allegedly demonstrate that the use of Section 10 in connection with the separation of the Funds would be inequitable.

2. At the outset, I should point out that the Petitioners and their actuaries have failed in every respect to

demonstrate that the application of Section 10 will create any inequities. The original theory that the application of Section 10 would create a "disenfranchisement" to certain members has been abandoned. The so called equitable split of 80% - 20% originally advanced has been replaced by a suggested 65% - 35% split. Additionally, no statement, sworn or otherwise, has been offered which would even indicate that if Section 10 were utilized in the separation of the Funds it would be inequitable, much less than cause irreparable harm of any kind.

3. We have examined the statistical data annexed to the letter of William J. Corcoran, dated October 22, 1975. Included therein was a table designated as Table 1, prepared by Tolley International Corporation, which purports to show the contributions made on behalf of the active participants for the years 1971, 1972 and 1973. A second table designated Table 2 represents a method of dissolution of the funds based on the total present value of liabilities for all persons covered by the Joint Pension Plan. We seriously question the various assumptions in the calculations made by Tolley International. Tolley has, for instance, unilaterally changed the interest assumption set by and presently used by, the Trustees of the Local 14 and 15 Joint Fund from 5% to 9% or 8% for those eligible to retire. Moreover, the present fund is not earning 9% and there has been no cash out of the present portfolio and no attempt to find a new investment vehicle which will generate 9%. (See my prior Affidavit, at par.

9). Nor is such a cash out feasible without taking a substantial capital loss which when computed into the calculation would tend to vitiate the effect of the inflated 9% assumption. Apparently, based on certain discrepancies between the figures in Table 2 and the Segal letter of July 3, 1975, other underlying assumptions have been changed, none of which assumptions are noted in the tables or in the accompanying letters of Messrs. Corcoran and Tabor. A glaring mystery is Local 14's apparent loss of 10% of its membership for pension coverage from 1160 members in the 1972 base year to 1044 members in base year 1973. (See Table 1) This unexplained loss is strange especially in light of the liberal requirements within the present Pension Plan. But notwithstanding all of the above, the results submitted by the actuaries for Local 15 do not demonstrate that Section 10 is an inequitable method of dissolution of the Fund. In effect, they demonstrate Local 14's position that a 60-40 split in the manner suggested by Section 10 achieves a just result, a result almost parallel to Local 15's suggested 65-35 split. The slight percentage differentiation can be, for the most part, attributed to the change of actuarial assumptions in Local 15's favor and not to any improvement in the methodology employed.

4. The approach to the problem taken by Tolley International Corporation is strange indeed. Table 1 attempts to demonstrate a contributions' method which results in 74-26 split of the Fund in Local 15's favor. There is a consensus of opinion

between Mr. Tabor and Mr. Corcoran that Table 1 demonstrates the inequality of Section 10. The contribution method, however, only honors future service credits. It totally ignores past service credits. It tests the contributions of active participants in 1971, 1972 and 1973. It ignores all participants who might have retired in the previous 15 years and any participants who for whatever reason were inactive during these three base years. In effect it ignores the vast majority of present pensioners who are actually drawing on the Fund. Moreover, in Tolley's application the method deprives Local 14 of a full 10% of its membership without any apparent explanation for the loss.

5. Tolley then moves to a liabilities' approach which it describes as a "much more equitable method for allocating assets." This results in a suggested 65-35 split in Local 15's favor. No longer do we find Mr. Corcoran's unequivocal statement that it's a matter of arithmetical certainty that there must be an 80-20 split. Table 1 which attempts to approximate that assertion has been discarded by his own actuaries in favor of a "more equitable approach", a liability approach which interestingly enough differs from the Section 10 approach by five percentage points. The proximity in result attests to the fact that Section 10 is an equitable method of dissolution. No longer are there cries of disenfranchising 80% of the membership. Moreover, the shift in percentage can be attributed to a change of actuarial

assumptions. The fact that Local 15 can only seriously proffer a method similar in effect to that of Section 10 and the fact that the methodology employed must be qualified by a favorable shift in actuarial assumptions dispels any necessity to seriously challenge the methodology. It does nothing either theoretically or statistically to refute the fact that Section 10 is an equitable method of dissolution. It enforces that fact.

6. Some mention should be made of Mr. Faggen's letter. Prior to opting for a liabilities' approach as opposed to a contributions approach, Mr. Faggen states:

> "While we have not yet been able to make calculations as of December 31, 1973, the data base date selected by three of the four actuaries on directions issued by the Special Master, on the basis of a series of calculations which we made in 1974, there is a very strong indication that a proper division of the Joint Fund along sound actuarial lines would be as follows:
>
> Local 14-- 32% = $10,752,000
> Local 15-- 68% = 22,848,000
> Total 100% $33,600,000" (Emphasis added)

He has made no calculations on the basis of a 1973 base year but he had made calculations in 1974, which he apparently still wishes to keep to himself. However, he is able to make a 3% distinction from Tolley's methods merely on the basis of "a very strong indication", without any substantiation.

7. Thus, no proof has been submitted that would indicate that a split along the lines of 60% to Local 15 and 40% to Local 14 would adversely effect either of the new funds. Nor has proof

been submitted that would show that Section 10 was an unacceptable method of dissolution. In my previous affidavit, submitted in opposition to this motion, I described how a dissolution along the lines of Section 10 conforms in theory to the principle upon which these funds were based, namely the principle of "unfunded liabilities". The actuaries for Local 15 have now shown that Section 10 in practice achieves a just result. Even playing with the actuarial assumptions could not result in a disparity of effect sufficient to show that Section 10 is anything but an acceptable and equitable method of dissolution.

WHEREFORE, it is respectfully requested that this motion be denied in all respects and that the dissolution of the Joint Pension Fund proceed as heretofore directed, pursuant to the procedures set forth in Section 10 of the Joint Pension Plan, together with such other and further relief as to this Court may seem just and proper.

Charles Maresca

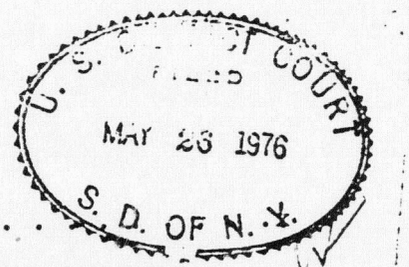
CHARLES MARESCA

Sworn to before me this
31st day of October, 1975.

Robert J. Aurigema

ROBERT J. AURIGEMA
NOTARY PUBLIC State of New York
No. 30-4606657
Qualified in Nassau County
Commission Expires March 30, 1977

SPECIAL MASTER'S RECOMMENDATION.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5).

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SPECIAL MASTER'S RECOMMENDATION

74 Civ. 2887

R.J.W.

Welfare and pension funds have been operated, since 1950 and 1956, respectively, on a joint basis for the benefit of members of Locals 14 and 15 of the International Union of Operating Engineers. The trustees of the Funds are drawn from the ranks of the union and the associations representing the employers who contribute to the funds.

Recent political disputes led the Trustees to conclude during 1974 that the Joint Funds should be divided on an equitable basis and thereafter administered separately for the benefit of the members of Locals 14 and 15, respectively, and a resolution of the Trustees of the Joint Funds directing this action was unanimously adopted on June 11, 1974.

Further disputes as to the mechanics of division were followed by a petition to this Court by all of the Trustees, except the one representing Local 14, seeking the appointment by the Court of a Special Master in accordance

with §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5), for the purpose of dividing the funds. The Trustees representing Local 14 moved to dismiss the petition on the ground that this Court lacked jurisdiction over the subject matter and on the further ground that certain provisions of the Employees Retirement Income Security Act (ERISA), 29 U.S.C. §1001 et seq., had not been complied with by the Petitioners.

The Court rendered a decision dated March 6, 1975 denying the motion to dismiss the petition for the appointment of a special master and granting the petition for the appointment of a special master under Rule 53(b) Fed. R. Civ. P.

Pursuant to the Court's direction, proposed orders were submitted by both sides and on May 21, 1975, the Court signed the counter order proposed by counsel for the Trustees representing Local 14. This appointed a special master and read in pertinent part as follows:

> "ORDERED, that pursuant to Rule 53(e) of the Federal Rules of Civil Procedure the Special Master shall preside over the hearings relating to the dissolution of the Joint Pension and Welfare Funds herein for the purpose of preparing for submission to this Court pursuant to Rule 53(e) of the Federal Rules of Civil Procedure equitable plans of division of such Joint Funds which plan of division of the Joint Pension Fund shall follow the procedures set forth in Section 10 of the Joint Pension Plan for such Fund, as voted by the Trustees, in their resolution of June 11, 1974, and the plan of division of the Joint Welfare Fund shall be equitable in all respects;"

Several preliminary meetings were held by the Special Master which were attended by counsel for: the Joint Plan; the Trustees representing Local 14; the Trustees representing Local 15; each of the Employer Trustees; as well

as by actuaries representing each local; the Joint Plan and one of the Employer Trustees. At these meetings it became apparent that there was a division of opinion over the provision of the order directing that the plan for dissolution of this Joint Pension Fund follow the procedures set forth in Section 10 of the Pension Plan for that Fund.

Counsel for Local 15 submitted a notice of motion and an affidavit and brief in support thereof, copies of which were sent to the clerk of this Court. The motion sought an order pursuant to Rule 61, F.R.C.P. modifying the Court's order of May 21, 1975 by eliminating therefrom the direction that the plan of division of the Joint Pension Fund follow the procedures set forth in Section 10 of the Joint Pension Plan and by directing that the plan of division be equitable in all respects.

Local 15 argued that the Trustees of the Joint Pension Fund never intended that the provisions of Section 10 were to be followed strictly in dividing the fund. It is said that, in any event, the authority determining the plan to be followed rests with the Court which had described the division as a transfer rather than a limitation. To insist on following Section 10, says Local 15, will make meaningless and ineffective that part of the Court's order instructing the Special Master to prepare ". . . equitable plans of division of such joint funds . . ."

It is further argued by Local 15 that a division which follows Section 10 is inequitable in any situation other than a termination. The inequity is said to arise from the fact that under an application of Section

SPECIAL MASTER'S RECOMMENDATION

10 there will not be sufficient funds on hand to cover the pension credits of every participant, and the system of priorities required by Section 10 results in the allocation of such funds as are available to pensioners and to participants who are active but who are eligible for immediate pensions. While the plan provisions do prescribe an allocation of shares to all other participants after the two prior groups are provided for, provision for these groups exhausts the available funds. Such a situation, says counsel for Local 15 and for the Petitioners in this matter, "disenfranchises" the active participants who are not yet eligible for retirement, of which there are about 6,100, while allocating all the funds to the pensioners and those eligible for immediate pensions, of which there are about 1,100 according to the actuarial firm retained by the Joint Fund. If the Section 10 plan is followed, it would appear that of a total fund of $33,600,000 (market value of assets as of March 31, 1975) 45-1/2% or $15,288,000 would be allocated to Local 14, and 54-1/2% or $18,312,000 would be allocated to Local 15. (See letter of October 22, 1975 from Faggen-Dogan, Inc. to Robert Brady marked Exhibit III.) Since Local 15 membership is about four times that of Local 14, it is easily seen that this distribution does not please Local 15.

The actuaries retained by Local 15 and by the Petitioners have also argued (in the A. S. Hansen, Inc. memo of October 20, 1975 to Mr. Richard O'Neill and attachments marked Exhibit V) that the calculations made by the Local 15 actuarial firms used only 23% of the total members of both groups, and that those members included in the calculation represent 42% of the Local 14 membership and only 18% of the Local 15 group.

SPECIAL MASTER'S RECOMMENDATION

Several plans have been suggested by the Local 15 group. The first would determine separately for Locals 14 and 15 the present values of benefits to be paid to all members and the present value of contributions to be received on account of all members. The difference between these amounts would represent the amount of assets which should be on hand in each fund, and the assets of the joint fund would be allocated on the basis of the ratios of these latter amounts to the total fund.

The second method proposed would reconstruct the composition of the fund by accumulating contributions, benefits paid, investment earnings and expenses by Local. The overwhelming practical difficulties make use of this plan impossible.

A third method would determine the total actuarial liabilities for all members of each Local and to distribute the assets of the joint fund in proportion to the total liabilities for each Local.

A further proposal made by the Local 15 actuaries and endorsed by counsel for Employer Trustee O'Neill would discount the present value of liabilities for each Local at varying rates of interest. (See memorandum of Edwin Jones, dated September 19, 1975, included with Richard O'Hara's affidavit of October 31, 1975 which is marked Exhibit IV. See also Table No. 2 accompanying letter of October 22, 1975 from Tolley International Corp. to William Corocran which is marked Exhibit III.) This method divides the members into five classes depending on their status and age and applies different discount rates to the classes as follows:

SPECIAL MASTER'S RECOMMENDATION

Class	Interest Rate
Retired	9%
Age 52 and 15 years service	8%
Fifteen years service but under 65	7%
Ten years service	5%
Less than 10 years service	5%

This method would determine a liability for every member and divide the Joint Fund on the basis of the ratio of total liabilities by Local. Following this method 34.9% of the Joint Fund would be given to Local 14 while 65.1% would go to Local 15. (See Tolley International Corp. letter marked Exhibit III, table 2.) The percentages obtained following the Section 10 method were as stated above 45-1/2% to Local 14 and 54-1/2% to Local 15. The varying discount rate approach would therefore result in a diminution of $3,561,600 in the amount which it is estimated that Local 14 would receive with a concomitant increase of the same amount in the share of Local 15 as may be seen from the following:

Local 14 - 45.5% share	$15,288,000
Local 14 - 34.9% share	$11,726,400
Decrease in Local 14 share	$ 3,561,600

In response to Local 15 and the Petitioner, Local 14 argues that there was no doubt that the Resolution of the Board of Trustees of June 11, 1974 which was unanimously adopted (see Exhibit A to affidavit of Richard

O'Hara dated October 6, 1975 and marked Exhibit I) provided specifically for the use of Section 10 of the Retirement Plan. Nor could it be alleged that there was overreaching since a copy of the March 24, 1975 letter of Doran, Colleran, O'Hara, Pollio & Dunne accompanying the Proposed Counter Order (Exhibit B to the O'Hara affidavit marked Exhibit I) was given to counsel for the Petitioners and for the Employer Trustees.

It is suggested on behalf of Local 14 that there was a considerable period of time between the adoption of the Trustees' Resolution and the protest by Local 15 and the Petitioner against the use of Section 10. It is further suggested that the reason for this present protest is the realization of the amount of assets which will be received by each fund if Section 10 is followed rather than theoretical propriety of the use of the section.

Local 14's counsel and actuaries point out that it is characteristic of building trade pension plans that they operate on an unfounded liability plan, i.e., a plan which will have on hand at any given time assets to cover the liabilities on account of their present pensioners and those eligible for immediate retirement and will rely on future contributions to cover the liabilities of future entrants into these categories. This, say they, is the status of the Joint Fund--the liabilities for pensions and those eligible for immediate retirement exhaust the assets of the fund. The plan members in these two categories are those who have first claim on the assets of the fund, and to follow any of the plans suggested by Local 15 and its actuaries would reallocate some of these funds to other categories of members and thus alter the security of the first two groups.

SPECIAL MASTER'S RECOMMENDATION

With regard to the varying discount rate approach, Local 14 points out that it is still substantially a reallocation plan and, in addition, makes use of some discount rates which are unrealistic as applied to the assets of the Joint Fund.

Local 14 has also maintained that Local 15 and Petitioners have not made a case which would warrant the court's amending its order of May 21, 1975. They contend that there has not been due diligence on the part of Local 15 and that equity in this case does not require the court to exercise its discretionary power to amend an interlocutory order. (See Point 11 of Respondents' Brief marked Exhibit I.)

Having reviewed the arguments of both sides and the exhibits in support thereof, it is my opinion that the decision to apply Section 10 is not the result of any overreaching or deception on the part of Local 14. Use of the Section was directed by the Trustees at a meeting at which all interested parties were represented. Nor is there any indication that Local 14 knew at the time of the meeting that the results of the application of Section 10 would be as indicated by the Morton Segal Company study.

As to the claim that application of Section 10 will result in inequity, it appears necessary to first determine what are the requirements of equity in a situation such as is presented here. If, as a result of the division of a joint plan into two continuing separate plans, the members of each plan find themselves as well secured with respect to their promised benefits as they were before the division, then equity has been done.

SPECIAL MASTER'S RECOMMENDATION

Under the Joint Plan there never were sufficient assets on hand to fund the accrued benefits of all participants at any given time. This situation was not unique to this Joint Fund, but is rather common in the building trade industry. The plan members who had, so to speak, first call on the assets were those already on pension followed by those members eligible for immediate pensions by reason of their ages and years of credited service.

Allocation of the available assets to these two categories exhausts the funds on hand. If Section 10 is applied the funds will be allocated according to the same priorities. The members of the two new plans will have the same security for their benefits after the division as they did before it. This appears to be an equitable result.

The various plans suggested as possible alternatives by Local 15 and Petitioners all endeavor to spread the security provided by the funds to further categories of participants by allocating the funds on the basis of ratios determined by recognizing the liabilities attributable to all participants. These methods all result in a lessening of the shares allocable to Local 14 and increasing the shares allocable to Local 15. This result occurs because there are more plan members in Local 15 and more of these are younger in years and in service than those of Local 14. The fact remains, however, that the security these younger members had was no greater under the first plan than it will be under the new plan.

It has been argued by Local 15 and Petitioners that the assumption of an earnings rate of 5% on the assets of the fund could be adjusted to

SPECIAL MASTER'S RECOMMENDATION

substantially higher rates for some categories thus stretching the allocation of the funds to lower priority categories. It is true that insurance companies today are assuming higher interest rates than 5% in calculating their required consideration for annuities and the reserves therefor. It is quite another matter, however, to change a portfolio which according to the last report submitted to the New York Insurance Department was earning about 5% to one which will earn the higher rates prevalent today without incurring substantial capital losses. Those offering this suggested method of allocation have not made any showing that these losses would not be incurred.

In the light of the foregoing considerations, it is hereby respectfully recommended that the order of May 21, 1975 remain unchanged and that the special master be instructed to continue the process of determining an equitable allocation of the Joint Fund under Section 10 of the Plan.

Respectfully submitted,

William J. Moore
Special Master

Dated: New York, New York
May 21, 1976

AFFIDAVIT OF RICHARD L. O'HARA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29 U.S.C., SECTION 186(c)(5).

Docket No.
74 Civ. 2887

AFFIDAVIT

----------X

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

RICHARD L. O'HARA, being duly sworn, says:

1. I am a member of the firm of Doran, Colleran, O'Hara, Pollio & Dunne, P.C., attorneys for Local 14 of the International Union of Operating Engineers and Thomas J. Nolan, as a Trustee of the Joint Pension and Welfare Funds of Locals 14, and 15. I make this affidavit in opposition to the within application to modify that portion of the Order of this Court dated May 27, 1975 which directed that the Joint Pension Fund be separated pursuant to the procedures set forth in Section 10 of the Joint Pension Plan. Although such application purports to be brought by the Board of Trustees of the Joint Pension Fund, it should be noted that 3 of the 4 Trustees of such Fund are represented by separate counsel and that such Trustees are not parties to this application.

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2. Mr. Corcoran premises his application to modify this Court's Order solely upon his opinion that the procedures under Section 10 of the Plan are both inappropriate and inconsistent with the intent of the Court as expressed in its decision (Corcoran Aff. par. 6; Pet. Br. p. 5, 10). Based upon this erroneous premise, Mr. Corcoran concludes that it could have only been through "inadvertence" on the part of the Court, that this Court could have included such directive in its Order.

3. First, it should be pointed out that, as indicated by Mr. Maresca in his affidavit, the formula set forth in Section 10 is an accepted actuarial formula for dividing or separating a particular Fund. (Maresca Aff., par. 3) Second, the Pension Fund is being split and the procedures contained in Section 10 are being used merely as the method to effectuate such split or separation. It is, therefore, irrelevant and immaterial that the formula contained in Section 10 may also be utilized in affectuating a termination of such Pension Fund.

4. Section 10 was applied as follows:

A. The actuarial cost for each present pensioner was computed.

B. The actuarial cost for each person who is presently eligible to retire was computed.

C. A separation was made in these classes to divide them into Local 14 and Local 15.

Since the accrued liabilities computed in 1 and 2 exceeded the book value of the current assets, the process was ended. Such assets as are determined to be due to the Local 14 Pension Fund will then be transferred into the new Local 14 Pension Fund as the corpus of such Fund. The assets will not immediately be paid out to the pensioners of Local 14 in toto. Rather, the pensioners of Local 14 will continue to receive monthly benefits in the same manner as they are presently receiving such payments. Those members of Local 14 who are eligible to receive pension payments but have not at this time elected to do so will retain the same credits that they had previously accumulated under the Joint Pension Plan.

5. It is strange indeed that Mr. Corcoran should now claim that this Court must have fallen asleep and "inadvertently" signed an Order which directed a separation pursuant to Section 10 of the Plan. A review of the events which occurred prior to the present application reveals the following:

A. On June 11, 1974 there was a special meeting of the Trustees of the Joint Funds. Present at such meeting was Mr. Corcoran and Mr. Tabor, an employee of the actuarial firm representing such Funds. At that time the Trustees unanimously passed a resolution with respect to the

dissolution of the Pension Fund and the manner in which such dissolution was to be effected. (A copy of such minutes is annexed hereto as Exhibit A.)

B. At no time between June 11, 1974, when such resolution was passed, and May 21, 1975 when this Court signed the Order appointing the Special Master, did counsel for the Trustee, the actuarial firm representing such Fund or the Trustees themselves, ever attempt to maintain that the Trustees never intended to effectuate such dissolution in accordance with Section 10 of the Plan or that Section 10 was not an acceptable actuarial method for effecting such dissolution.

C. On March 13, 1975, Mr. Corcoran submitted to this Court a proposed Order with Notice of Settlement. Thereafter, my firm submitted to this Court a Counter-Proposed Order containing a directive that such dissolution be effectuated pursuant to Section 10 of the Plan. More importantly, however, Mr. Kennedy of my firm wrote an explanatory letter to the Court dated March 24, 1975, copy of which is annexed

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hereto as Exhibit B, detailing the reasons, as well as annexing thereto the supporting documents, as to why the Section 10 directive should be included in the Order. Copies of such letter were sent to counsel for each party.

D. Between March, 1975 and May 21, 1975, when the Order was signed, no attempt was made by Mr. Corcoran, or anyone else for that matter, to write to this Court and explain why Section 10 should not be included in such Order. Additionally, on or about June 9, 1975, Mr. Corcoran served such Counter Order with Notice of Entry upon all parties. More importantly, however, is the fact that between such periods of time Mr. Corcoran and the actuarial firms employed by both Local 15 and by the Funds had ample time within which to ascertain and raise any alleged objections to the application of Section 10.

E. Between May 1975 and the end of June 1975, the actuarial firm employed by Local 14 was at work in the Fund Office with the actuary employed by the Fund refining the census in preparation for the hearings before the Special Master. Thus, it

can be seen that ample time and facilities were available to the moving party herein in order to ascertain and voice any objection to the application of Section 10.

6. The possibility of this Court having "inadvertently" included Section 10 in its order are non-existent. By its very nature, the counter-proposed order presented a clear choice to this Court, a choice centering around Section 10. Moreover, as previously stated, counsel for Local 14 caused to be mailed to the Court, with copies to counsel for all parties, a covering letter under dated of March 24, 1975 (See Exhibit B), which explained to the Court that the Trustees had in fact voted unanimously to use Section 10 as the vehicle for dissolution, and regardless of the nomenclature used in this specific instance, that Section 10 was a viable method to effectuate dissolution. Included with the order and letter, counsel for Local 14 also mailed to the court a photostatic copy of Sections 7 and 10 of the Joint Pension Plan, as well as the minutes of the Special Meeting of Trustees of June 11, 1974 wherein the Trustees voted to use Section 10. The Court agreed that Section 10 was the method to be used and two months later, after due deliberation, signed the order submitted by counsel for Local 14.

7. If there is laxity to be attributed to anyone under these circumstances, it certainly cannot be attributed to

the Court. Mr. Corcoran was in receipt of the counter-proposed order, as well as the covering letter, and yet did or said nothing for the two month period prior to the execution of the order. In fact, he was apparently so happy with the order that notwithstanding the fact that counsel for Local 14 served the order upon the parties with notice of entry on May 27, 1975, Mr. Corcoran again served the same order with notice of entry on June 6, 1975.

8. According to Mr. Corcoran, it was not until July 8, 1975, at a meeting of actuaries and counsel, that Mr. Corcoran realized the "actuarial impact" of the use of Section 10. This in itself is a strange revelation coming from the man who drafted the trust instruments and whose actuary, Mr. Faggen, drafted Section 10, all of which were approved by Mr. Corcoran, as counsel to the Funds, and as required by law, were submitted to various governmental agencies (e.g. IRS). Mr. Corcoran wishes us to believe now that as representative of the Trustees, he allowed the Trustees to vote unanimously at a Trustees' meeting in June, 1974, on a measure affecting the viability of the remaining pension set up, with a complete lack of knowledge concerning its effect. It would probably be more accurate to say that Mr. Corcoran's dissatisfaction with Section 10 comes from a dissatisfaction with its arithmetic result respecting Local 15. In an exercise of backward logic, Mr. Corcoran then

reasons from a result which Local 15 doesn't like, to say that therefore the plan is inequitable.

9. Section 10 sets up a mechanical formula which certainly could or should have been worked out by the two actuarial companies easily accessible to Messrs. Corcoran and Brady and in fact in the employ of their clients prior to the June, 1974 meeting, at the June, 1974 meeting and continuously thereafter. In fact, Mr. Tabor, of Tolley International Corporation, the present actuaries on the Funds, who was also present at the June, 1974 meeting, worked with Martin E. Segal Company in obtaining "refined active census data" to be used within the Section 10 method. (Maresca Aff. , par. 8). Certainly, it is difficult to imagine that Mr. Corcoran never saw the results of Section 10 until the meeting of July 8th. Certainly he should have been apprised of the need to know such results when a counter-proposed order was submitted to this Court for signature that provided for the use of Section 10.

10. The inequity, which according to Mr. Corcoran, became apparent on July 8th, was the "disenfranchisement" of countless thousands of participants within the Joint Pension Fund brought about by the use of Section 10 (Corcoran Aff., par. 6). Apparently, Mr. Corcoran, in constructing the theory of "disenfranchisement" has failed to inform this Court that in fact today under the Joint Pension Fund, the almost exact number

of what he labels as "disenfranchised" participants are not and never have had their credits fully funded by the Fund since the Pension Fund has always operated on the theory of "unfunded liabilities". (See Maresca Aff. , par. 5, 6). The fact that Mr. Corcoran must set up this subterfuge of "disenfranchisement" as well as his initial misconception of an actual payout to pensioners, shows the heights he has gone to in order to fabricate his theory of inequity. There is no disenfranchisement by operation of Section 10. (Maresca Aff., par. 5, 6).

11. In neither his memorandum of law nor his affidavit, does Mr. Corcoran analyze the results achieved pursuant to Section 10 and show how such results are inequitable. His proffering of alternative methods says nothing about the "inequities" of Section 10. In the absence of showing such inequity, these alternative methods become irrelevant. All Mr. Corcoran is saying is that Local 15 should get a larger "slice of pie". The mere fact that a formula limits one party to a fair share does not mean that such formula is inequitable. In any litigation we have winners and losers, but it is not suggested that litigation is, therefore, inequitable. Since the lawsuit is rare in which adverse parties both achieve their ideal results, one party's allegation that he has not won his argument does not itself prove "inequity". Moreover, Mr. Corcoran's prior conduct clearly

indicates that at all times prior to July 8th he thought Section 10 a fair method to use in separating the Pension Fund. He so advised the Trustees. However, we are now told that it was not until he saw the actual arithmetic did he realize that he must abandon such method. The reason? The results of the application of Section 10 to the separation of the Joint Pension Fund produce figures which are not satisfactory to Local 15. Thus, for the first time we have suggested to us alternative plans of dissolution based upon new actuarial assumptions -- neither of which were ever suggested by the Trustees, their counsel or by the actuary to the Fund on June 11, 1974 nor, I might add, approved by the Trustees.

12. The within application should be denied in all respects.

/s/

RICHARD L. O'HARA

Sworn to before me this

6th day of October, 1975.

DORIS J. REESE
NOTARY PUBLIC State of New York
No. 2[illegible]
Qualified in [illegible] County
Commission Expires [illegible]

EXHIBIT A, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA.

Special meeting of the Joint Welfare and Pension Funds of Local Unions 14 & 15 held on the 11th of June 1974 at the Engineer's Club 32 West 40 St. N.Y.C.

. . . . . .

Those present for trustees: Alfred G. Gerosa, George E. Robke, Thomas J. Nolan and Thomas A. Maguire. Alternate Trustees: Theodore King and John T. Murphy were also present. In attendance were William Corcoran, Council for the Funds, Mr. Joseph Salcito, Fund Administrator and Mr. Nicholas Lore, Fund Co-Administrator. Others in attendance were Mr. Richard O'Hara, council for Local 14, Messrs. John J. Messinger, Joseph Rizzuto and Jerry Finn of Local 14, Nicholas J. Laccetti and Philip B. Polak of Martin E. Segal & Co. and William C. Finneran of the G.C.A.

The special meeting was called to order by Chairman Gerosa at 11 A.M.

The Chair requested that the letter from Trustee Nolan to the other Trustees and the responses to Trustee Nolan's letter be acknowledged. A copy of the three letters is attached.

Trustee Nolan requested that the Funds (Pension & Welfare) be split as soon as possible. Trustee Maguire agrees with this course of action. Having this issue before the Trustees to resolve the chair decided to not answer Trustee Nolan's letter at the special meeting, but to lay the subject aside until the regular meeting schedule for the 18th of July, 1974.

After much discussion on the spliting of the funds, the course of action that should be followed to serve all of our members without predjudice and how to provide protection for the Trustees. The following motion was placed before the Chair by Trustee Nolan.

These Funds shall be terminated under the perspective termination provisions thereof the approval of the termination and allocation of the Funds in accordance with the above to be submitted to the U.S. District Court under the inpass provision of each fund and termination shall be effected by June 30, 1975, but no later.

The employer trustees shall have the right to special counsel but in no event shall these funds be liable for a fee in excess of $5,000. All trustees individually and jointly and their heirs and estates be protected from any action due to actions of any kind because of termination of the funds.

Appropiate insurance in the form of "Hold Harmless" be provided for all trustees, that the trustees for their protection be allowed to pursue any action to protect themselves caused by the termination of the funds at the expense of the funds. The motion was seconded by Trustee Robke and was unanimously passed.

The meeting was adjourned at 1:40 PM.

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EXHIBIT B, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA.

March 24, 1975

BY HAND

Honorable Robert J. Ward
United States District Court
Southern District of New York
U.S. Courthouse, Foley Square
New York, New York 10007

Re: Petition for Appointment of a Special Master in Dissolution of Joint Welfare and Joint Pension Funds of Local Unions 14, 14B, 15, 15A, 15C, 15D AFL-CIO; Index No. 74 Civ. 2887

Dear Judge Ward:

Enclosed herewith please find a copy of a proposed order in the above entitled matter submitted by Locals 14 and 14B of the International Union of Operating Engineers and Thomas B. Nolan as a Trustee of the Joint Welfare and Joint Pension Funds.

Given the complexities inherent in a review of the pension and welfare situations of Locals 15 and 14 respectively, we feel it is imperative that the Special Master to be appointed by this Court be given some direction in this matter. Moreover, it was the Trustees' intention, as evidenced by their motion of June 11, 1974, unanimously passed, that any division of the Joint Funds be made pursuant to the respective "termination provisions thereof", specifically Section X of the Welfare Plan. While we are aware of

the fact that the Court is reluctant to label this division a "termination", irrespective of the nomenclature used, it was the Trustees' intention to utilize specific provisions of the Plan for guidance especially with respect to the Pension Fund. There are no provisions either in the Trusts or Plans for dissolution, division or separation.

I have annexed a copy of the minutes of the June 11, 1974 meeting, as well as a copy of Sections VII and X of the Joint Pension Plan for the Court's convenience.

Very truly yours,

RJA:mr
Encs.
cc: Corcoran and Brady, Esqs.
Shea, Gould, Climenko & Kramer, Esqs.
Cunningham & Kaming, Esqs.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA

Section 7. Administration of the Plan

(1) The General administration of the Plan and the responsibility for carrying out the provisions hereof is placed in the Board of Trustees, the members of which may or may not be Participants in the Plan of Contributing Employers, and which shall be constituted in accordance with the terms of the Agreement and Declaration of Trust.

(2) The Board of Trustees shall adopt from time to time service and mortality tables and a rate of interest for use in all actuarial calculations required in connection with the Plan, and shall appoint actuaries from time to time to serve at its pleasure and to make annual actuarial valuations of the contingent assets and liabilities of the Plan and shall certify to each Contributing Employer and to the Unions the results of such actuarial valuations. Notwithstanding anything herein to the contrary, the amount of benefits that will be provided shall not exceed the benefits actually available on the basis of such annual actuarial valuations.

Section 10. Terminations

(1) The Plan may be terminated by the Board of Trustees only with the consent of the Unions and a majority of the Contributing Employers, and, in such event, all the funds of the Plan shall be used for the exclusive benefit of Participants and Pensioners as of the date of termination of the Plan, and shall be allocated in shares determined by the Board of Trustees on the basis of reserve values for the actuarial valuation made in accordance with subsection (2) of Section 7, in the following order:

First, each Pensioner shall be entitled to a share equal to the reserve computed to be required for his pension; and

Second, each Participant who has reached his 62nd birthday and has otherwise fulfilled the requirements of Section 4, hereof, shall be entitled to a share equal to the reserve computed to be required for his pension credits; and

Third, each other Participant shall be entitled to a share equal to the reserve computed to be required for his pension credits; provided that if the funds of the Plan are insufficient to provide in full for the shares under any of the above paragraphs, after provision for all shares under previous paragraphs, each share under such paragraph as to which the funds are insufficient shall be reduced pro rata.

(2) The Board of Trustees may require that all shares be withdrawn in cash or in immediate or deferred annuities or other periodical payments as they may determine.

(3) Anything herein to the contrary notwithstanding, the rights of all Participants and Pensioners to benefits accrued to the date of any complete discontinuance of contributions, to the extent then funded shall be non-forfeitable.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF RICHARD L. O'HARA

Special meeting of the Joint Welfare and Pension Funds of Local Unions 14 & 15 held on the 11th of June 1974 at the Engineer's Club 32 West 40 St. N.Y.C.

. . . . . .

Those present for trustees: Alfred G. Gerosa, George E. Robke, Thomas J. Nolan and Thomas A. Maguire. Alternate Trustees: Theodore King and John T. Murphy were also present. In attendance were William Corcoran, Council for the Funds, Mr. Joseph Salcito, Fund Administrator and Mr. Nicholas Lore, Fund Co-Administrator. Others in attendance were Mr. Richard O'Hara, council for Local 14, Messrs. John J. Messinger, Joseph Rizzuto and Jerry Finn of Local 14, Nicholas J. Laccetti and Philip B. Polak of Martin E. Segal & Co. and William C. Finneran of the G.C.A.

The special meeting was called to order by Chairman Gerosa at 11 A.M.

The Chair requested that the letter from Trustee Nolan to the other Trustees and the responses to Trustee Nolan's letter be acknowledged. A copy of the three letters is attached.

Trustee Nolan requested that the Funds (Pension & Welfare) be split as soon as possible. Trustee Maguire agrees with this course of action. Having this issue before the Trustees to resolve the chair decided to not answer Trustee Nolan's letter at the special meeting, but to lay the subject aside until the regular meeting schedule for the 18th of July, 1974.

After much discussion on the spliting of the funds, the course of action that should be followed to serve all of our members without predjudice and how to provide protection for the Trustees. The following motion was placed before the Chair by Trustee Nolan.

These Funds shall be terminated under the perspective termination provisions thereof the approval of the termination and allocation of the Funds in accordance with the above to be submitted to the U.S. District Court under the inpass provision of each fund and termination shall be effected by June 30, 1975, but no later.

The employer trustees shall have the right to special counsel but in no event shall these funds be liable for a fee in excess of $5,000. All trustees individually and jointly and their heirs and estates be protected from any action due to actions of any kind because of termination of the funds.

Appropiate insurance in the form of "Hold Harmless" be provided for all trustees, that the trustees for their protection be allowed to pursue any action to protect themselves caused by the termination of the funds at the expense of the funds. The motion was seconded by Trustee Robke and was unanimously passed.

The meeting was adjourned at 1:40 PM.

AFFIDAVIT OF CHARLES MARESCA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)

Index No.
74 Civ. 2887
(R.J.W.)

AFFIDAVIT

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CHARLES MARESCA, being duly sworn, says:

1. I am Senior Vice President of Martin E. Segal Company, the actuarial firm engaged by Local 14 and Trustee Thomas J. Nolan to aid in the dissolution of the Joint Pension Fund and Joint Welfare Fund of Locals 14, 14B, 15, 15A, 15C and 15D, International Union of Operating Engineers, AFL-CIO.

2. I have reviewed the moving affidavit of William J. Corcoran, the attorney for the petitioners herein, as well as the memorandum of law submitted in support of petitioners' application to modify the order of this Court, dated May 27, 1975, appointing a Special Master to supervise the division of the

Funds in accordance with Section 10 of the Joint Pension Plan. I make this affidavit in response to certain specific allegations contained in such documents which relate to the actuarial principles necessary for the resolution of the problems arising from the split of the Funds.

3. At the outset it must be stated that Mr. Corcoran's assertions that "the separation of the Funds in accordance with Section 10 of the Pension Plan was drastically opposed to and inconsistent with the Court's decision" is completely inaccurate. (Corcoran Memo, p. 6). Section 10 is an accepted actuarial method for dividing the Pension Fund and is being used pursuant to court order as the vehicle to effectuate such dissolution. The fact that Section 10 may also be used as an accepted method of <u>terminating</u> the Fund is immaterial.

4. Once the required actuarial computations are made, the Funds will be divided in accordance with the liabilities encountered by Locals 14 and 15. If we use the figures contained in Mr. Laccetti's letter of July 3, 1975 (Exhibit A to Corcoran Memo), we see that the pensioner and beneficiary liabilities for all Local 14 and 15 members receiving payments as of April 1, 1975 totals $23,230,500, with $9,365,900 of that total going to Local 14 members and $13,864,600 to Local 15 members. If we can assume for the purpose of this example that the $23,230,500 figure represents the total of the Joint Pension Fund we can see

that approximately $9,000,000 will go to Local 14. That $9,000,000 will not be immediately paid out to pensioners. It will become the nucleus of the Local 14 pension fund in the exact same way that the $23,230,500 represents the present Joint Fund.

5. This leads to the second point which must be clarified. A careful analysis of the documents submitted by Mr. Corcoran in support of petitioners' position, reveals that he is attempting to create the impression that if Section 10 is followed there will be a resultant "disenfranchisement" of all those participants in the plan, other than those already receiving payments or those who are immediately eligible to receive payments. Nothing could be further from the truth.

Eligibility for the receipt of a pension from the Joint Fund is predicated upon the number of credits accumulated by a participant in the Plan. The application of Section 10 to the separation of the Joint Fund in no way affects the pension credits earned by any participant in the Plan. In other words, each individual participant in the Plan will have the same number of credits <u>after</u> the separation of the Fund as he did <u>before</u> such separation.

Additionally, it should be pointed out that the assets of the Joint Fund merely reflect the dollars which are available to back up these credits which the participants have earned.

Thus if the Fund was operating with "unfunded liabilities" before separation it is, of necessity, going to have "unfunded liabilities" after separation. However, the application of Section 10 or any other method to the separation of the Joint Fund in no way alters or changes "such condition". Thus, Section 10 does not and cannot create a "disenfranchisement" for any participant in the Plan.

Mr. Corcoran has failed to inform this Court of the very nature of the animal we are dealing with. The most marked characteristic of the pension funds within the building trades industry is the fact that they operate on the principle of "unfunded liabilities". In this category, there are few pension funds which have sufficient funds to cover all liabilities. Such funds are able to cover those pensioners who are making a present and immediate call on the funds, and those, who though not as of yet retired, can retire tomorrow and call on the funds for payment. As for the rest, they will be taken care of by future contributions and if your actuarial principles are sound, when such participants do actually draw on the fund, there will be sufficient funds present to accommodate them. Thus, the people in the lower categories are not, as Mr. Corcoran suggests, being "disenfranchised" within this system. Rather, the fund

is set up so that it will through future contributions be in a position to meet future liabilities with respect to these participants when their time for retirement comes due. It should be noted, however, that the application of Section 10 to the separation of the Joint Fund is neither responsible for such situation, nor does its application change or alter such situation.

6. The Joint Pension Fund which is the subject of this proceeding operates on the principle of "unfunded liabilities". This is a fact which Mr. Corcoran should be familiar with. One of his actuaries certainly expresses familiarity with the concept (Exhibit B to Corcoran Memo, p. 1). Thus, if you use the figures contained in Mr. Laccetti's letter for determining the accrued liabilities (pensioners) as well as the accrued liabilities for those who are now eligible for retirement but are still working, you will see that the accrued liabilities for these two classes of participants amounts to $41,000,000. Since I have been informed that the book value - as opposed to the actual market value - of the Joint Funds is approximately $40,000,000, it is clear that there are not enough assets to cover the remaining classes of participants who have not fully qualified for retirement. Thus, the use of the term "disenfranchisement" with respect to those non-qualified participants is as misleading as it is meaningless in analyzing Section 10 as a method of an

"equitable" distribution. When you divide a fund of "unfunded liabilities", if you do it equitably, as a matter of common sense, the result will be two funds sufficient to cover immediate liabilities. Thus the money in the pot at any given moment is or should be directly related to the immediate liabilities which are presently drawing on the Funds. Any other liabilities which will accrue in the future should be covered for the most part by future contributions. At the same time all participants retain the same amount of benefits they did before the split and thus all the parties are left in basically the same position.

7. With this background in mind I must take issue with Mr. Corcoran's assertions that Mr. Laccetti, of my office, and myself, showed a callous disregard of the equities involved in this situation. It is my opinion that in fact the method outlined in Section 10 provides an equitable vehicle to bring about a division of the Joint Pension Fund. To imply that I am oblivious to the equities of the situation, and at the same time attempt to set up a smokescreen under shouts of "disenfranchisement" is an insult not only to my office but also to this Court. Nowhere does Mr. Corcoran come to grips with the equities of Section 10. Instead he chooses to rely on distortion of basic actuarial principles and proceeds to insult those who disagree with him. As an example of the criticism of Section 10 contained in the exhibits annexed to Mr. Corcoran's memo, the

actuaries therein assume that no member of Local 15 is either a retired pensioner or one who could immediately retire. However the facts of the matter belie this assumption. In fact, there are a substantial number of retirees in Local 15, so much so that the liabilities as a result thereof exceed the amount of present liability attributable to members of Local 14 (Exhibit A to Corcoran Memo). I do not contend that Section 10 is the only method of dissolution that can be used in this situation nor do I contend that it is the only equitable method. I do, however, contend that Section 10 represents a fair and equitable method both in theory and in practice.

8. Mr. Corcoran's statement that the Martin E. Segal Company submitted a formula or procedure under date of July 3, 1975 is also inaccurate (Corcoran Memo, p. 6). We suggested no formula nor any procedure for separating the Joint Pension Fund. We were given a copy of this Court's Order dated May 27, 1975 by the attorneys for Local 14. We then worked with Mr. Tabor of the firm of Tolley International Corporation -- the actuaries for the Joint Pension Fund -- in obtaining "refined active census data". Both Mr. Tabor and the representatives of our office agreed that at the time the best refined active census data was for the year 1972. We then computed the results contained in our report dated July 3, 1975.

9. Much is made of our use of a 5% interest rate in

determining liabilities. It is my understanding that this 5% rate was recommended to the Trustees of the Joint Pension Fund by Tolley International Corporation and that such recommendation was then voted upon and approved by the Trustees. The Joint Fund has been operating on this 5% assumption and it would distort the true picture of the Joint Fund as it presently exists to unilaterally shift the rate to suit the individual judgment of certain actuaries who feel there should be a higher return. Upon dissolution they can opt for whatever interest rate they feel is consistent with the growth rate of the new funds. However, to use an 8 or 9% interest rate on the present funds would require that you sell off your present assets and find a new investment vehicle. Since there is a heavy investment in equities, you would have to take a substantial and immediate loss in today's market which might take years to offset. For our purposes, the Joint Funds lack the time for this type of speculation.

10. The method followed in Section 10 divides the Funds for the most part on the basis of vested accrued liabilities of the Funds. While it is true that the division is made on the basis of approximately 25% of the participants it is also true that this 25% represents those individuals in the fund who have the greatest claim on assets. To base the division on the basis of accrued liabilities is most consistent with the theory of

"unfunded liabilities" upon which the Joint Fund is based.

11. If there is a shift in emphasis as suggested by the actuaries for Mr. Corcoran, the remaining funds will not necessarily reflect the immediate liabilities but will more nearly respond to future obligations which may or may not accrue. To the extent any fund is diminished in favor of another to compensate for an overload of early credits in the other there is a danger of the insufficiency of the fund with respect to present liabilities. This would expose the Trustees immediately to inevitable lawsuits, the very predicament these same actuaries seek to avoid (Exhibit D to Corcoran Memo). It is precisely those pensioners with accrued rights who have standing to sue. The future beneficiaries could not sue until they earned the right to receive payment which would not be forthcoming. Under the Section 10 approach these future beneficiaries will not only have their pension credits intact but at the time they seek payment the funds should be adequate to pay them. In the alternative approach suggested, the only way to compensate for future and present payments may be to do so at the expense of one or the other fund. This is certainly not an equitable approach. Moreover the practical problems of compiling the data necessary for a "contribution period" or "value of each participant's equity" approach is overwhelming. If you use the years 1970 to 1975 as suggested by these actuaries you will run into the

further problem of the representative sample. In that type of approach the credits of those pensioners presently drawing on the Funds will in all probability not be represented at all, further increasing the likelihood of trustee exposure to lawsuits.

12. Mr. Corcoran thus far has not been talking at all about the equities of using the Section 10 approach but rather what is the best or most representative approach. In practical effect, as well as in theory, the Section 10 approach achieves a just result. Once the mechanics are completed, it calls for a distribution to Local 14 in the area of 40% of the corpus. Mr. Corcoran has proffered no concrete evidence to show that this figure is inequitable, he merely expresses his dissatisfaction with it. If the book value figure of $40,000,000 represents the actual amount of the assets of the Joint Pension Fund then a split pursuant to the mechanics of Section 10 should leave each party capable of meeting its immediate obligations, leaving future beneficiaries to rely on future contributions in precisely the same way and in the same proportion as the Joint Fund relies on these future contributions today. A shift in either direction would render one or the other fund incapable of even meeting these present obligations. If the book value of $40,000,000 is not an accurate estimate of the actual assets of the fund then

AFFIDAVIT OF CHARLES MARESCA IN OPPOSITION TO MOTION

the problem of future funding cannot be said to derive from the Section 10 split but rather from adverse market conditions.

CHARLES MARESCA

Sworn to before me this
6th day of October, 1975

NOTARY PUBLIC
No.
Qualified
Commission Expires March 30, 1977

REPLY AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C,15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)

Index No. 74 Civ. 2887 (R.J.W.)

REPLY AFFIDAVIT

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. CORCORAN, being duly sworn, deposes and says:

1. I am a member of the firm of CORCORAN AND BRADY, Attorneys for the Petitioners in the above entitled proceeding. I make this Reply Affidavit in answer to the affidavit of RICHARD L. O'HARA as well as the affidavit of CHARLES MARESCA, each sworn to October 6, 1975.

2. Counsel for LOCAL 14 says that Section 10 is being used as an acceptable method of procedure for separation of the Funds. This is downright untrue and a blatant attempt to change the course of the vehicle down the high road of misinformation. Segal & Company, through its representative Mr. Nicholas J. Lacetti, in his report of July 3, 1975 says that the Pension Fund would be disposed of by giving to those participants now

on Pension and to those participants otherwise eligible by being 62 years of age with 15 years of service, the entire corpus of the Fund. Mr. Lacetti at the meeting before the Special Master concluded that these pay-outs would exhaust the Fund. No one, other than these 900 or so Pensioners and those eligible for Pension would receive any benefit, with the result that in excess of 4,000 participants would receive absolutely nothing.

(See Segal & Co. report, Exhibit "A" of the Petitioner's Brief).

However, this position is changed by Counsel for Local 14 who says that "the assets will not immediately be paid out to the pensioners of Local 14 in toto". Nevertheless, by Section 10(2) the Trustees may require that all shares be withdrawn in cash or in immediate or deferred annuities or other periodical payment as they may determine.

In answer to the statements of Counsel for Local 14 in Paragraph 3 wherein he points out that the formula in Section 10 is "an accepted formula for dividing or separating a particular fund", his sole authority for this is Mr. Charles Maresca of the Actuarial firm of Martin Segal & Company. We now have statements by 3 of the 4 Actuaries working on this matter to the effect that this is not a true statement. The

formula in Section 10 was designed for use only in case of termination and then only if termination was taking place soon after the plan became effective. It is not even suited for use in case of termination on this date.

Referring to Paragraph 5 subdivision E, Counsel for Local 14 makes reference to the meetings at the Fund Office between the Actuary for Local 14 and the Actuary for the Board of Trustees and hence claims there was ample time to voice objection to Section 10.

The Actuarial firm employed by Local 14 and the Actuary for the Fund were refining the data not with respect to Section 10 but rather in preparation for an actuarial valuation of the entire Fund and all the participants to establish a proper method of dividing the assets.

Mr. Sol Tabor of Tolley International Corporation, the present Actuary to the Funds,and representatives of the Martin E. Segal Company, had met in June 1974 and on prior and subsequent occasions at the Fund office to refine and update and make as complete as possible the census data of all the participants. No reference or discussion was had with respect to Section 10 since the intent of updating and correcting and refining the data was to have as complete information as possible to conduct an actuarial evaluation to determine a

proper and equitable method of separating and dividing the assets. It was not until almost one year later that any reference to Section 10 was made, and then, not by the Actuaries.

Hence, there was no occasion or reason to learn of the results of Section 10 by your Deponent until the Martin Segal & Company disclosure on July 8, 1975.

In Paragraph 5A, Counsel for Local 14 refers to the Minutes of the Trustees for the Meeting of June 11, 1974 and the Motion by Trustee Nolan as to the manner in which the dissolution was to be effected. The minutes state the "Funds shall be terminated under 'perspective' termination provisions thereof etc."

The Trustees other than Local 14 Trustee did not understand the resolution to contain a decision with respect to the procedure to be followed. All they thought they were voting for was a decision to end the existence of the Fund as a Joint Fund leaving the details to be worked out by professionals operating under the watchful eye of a Special Master to be appointed by the Federal Court.

At no place in the Minutes is Section 10 referred to by name, either in the Motion or in any discussion held by the Trustees at the Meeting on June 11, 1974. Counsel for Local 14 made reference to it in his letter to Judge Ward under date of

March 24, 1975. In calling Trustee Nolan out of the meeting and giving him a written notation of the Motion to present to the Trustees, Counsel for Local 14 knew well in advance the actuarial impact of Section 10 on which the remaining Trustees and Counsel were uninformed. And this was done notwithstanding that Trustee Nolan in his letter to Trustee Maguire called for a separation or division of the Funds - not a termination.

ARGUMENT OF LOCAL 14 OF FAILURE TO OBJECT TO INCLUSION OF SECTION 10 IN ORDER

Counsel for Local 14 makes much of the fact that Counsel for Petitioners did not raise timely objection to the inclusion of Section 10 in the Court's Order but this is merely a straw man. This is not a situation in which one party should be seeking an advantage at the expense of another because the parties to this action are not the persons whose interests are affected. The parties of record in this case are merely names. The real persons whose interest are affected are the approximately 6,000 unnamed beneficiaries and they should not suffer because the solution to the problem has been directed down one road, if it now develops in the light of experience that the solution should more equitably have been directed down another road.

REPLY AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION

Who has been injured by the exploration of the effect of Section 10? Has anyone changed his position during the interim period? Would it not be very inequitable to say to several thousand beneficiaries that their future financial security must be impaired because the harm inherent in the application of Section 10 was not immediately apparent to a majority of the Trustees or to Counsel representing a majority of the Trustees? Would it not be more of a travesty to continue down a road pointed out by one of four Counsel on the basis of advance calculations performed in secret by one of four Actuaries? Does not equity demand that Counsel for Local 14 should have disclosed in his letter of March 24, 1975 to Judge Ward everything he had learned from his Actuary about the advantages which would flow to his client from the utilization of Section 10?

In Paragraph 5 of his affidavit, Counsel has the audacity to assert that "Mr. Corcoran should now claim that this Court must have fallen asleep" and "inadvertently" signed an Order which directed a separation pursuant to Section 10 of the Plan.

Mr. Corcoran did not attribute any laxity to the Court nor to anyone. He was acting in the best interests of all the beneficiaries without regard to Local Union designation and assumed that other Counsel was doing likewise.

It is not proper for Counsel for Local 14 to state that Local 15 does not like the result of the use of Section 10. It would be more accurate to state that the security of the approximately 5,000 members of Local 15 is impaired while the security of the 1100 members of Local 14 is being improved by the use of Section 10. (This is a fact attested to by three of the four Actuaries). This result should be as abhorent to Counsel for Local 14 as it is to the other three Counsel.

REPLY AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION

AFFIDAVIT OF MR. CHARLES MARESCA

Of the four Actuaries working on this case, only Mr. Maresca's opinions are suspect because only his organization has a financial interest in the outcome. One of the Actuaries has been retained by the Joint Fund for a number of years and will continue to be retained to render services on behalf of approximately 85% of the participants. The Actuary retained t o advise Counsel for Local 15 and the Actuary retained to advise Counsel for the Employer Associations understand that they will not be retained by either of the surviving Funds. Only Mr. Maresca's organization has been assured of a new client on a regular basis, and only his organization has been conducting itself as an interested party rather than an independent advisor. If it is necessary to further illustrate this point, let us examine a recent development.

One of the problems turned over to the Actuaries by the Special Master is the determination of a date as to which a proper data base existed. Mr. Maresca's organization had decided in advance that December 31, 1972 was the base date. The Actuaries have had several meetings and a great deal of work has been done on this matter. All four Actuaries scheduled a Meeting to be held on October 9, 1975 at 11 A.M. A few minutes before the appointed time, Mr. Maresca's associate telephoned to state that he had been instructed by Mr. O'Hara's

firm not to attend the meeting. The other three Actuaries met and decided unanimously that the data base as at December 31, 1973 is infinitely more complete and more accurate than that which existed on December 31, 1972.

Perhaps the financial interest of Mr. Maresca's organization explains why he alone of the four Actuaries involved in this case is willing to state "Section 10 is an accepted actuarial method for dividing the Pension Fund". The other three Actuaries state categorically that it is not.

Mr. Maresca states in the second paragraph of his #5, "the application of Section 10 to the separation of the Joint Fund in no way affects the Pension credits earned by any participant in the Plan". But, this is only a half truth - he should correct this sentence by changing the period to a comma and adding the words "such application merely disregards the fact that the credits earned are rendered valueless because they are not taken into consideration in the division of the assets of the Joint Funds".

At Paragraph 12 of his affidavit, Mr. Maresca says:

> "once the mechanics are completed it calls for a distribution to Local 14 in the area of 40% of the Corpus".

One need not be an Albert Einstein to know that if the membership of Local 14 is in the neighborhood of 1200 at most with a membership of approximately 5,000 plus in Local 15, the division of the Corpus should be on a basis of at least 4 to 1. By

claiming a division of 40% to Local 14 and the balance of 60% to Local 15, Mr. Maresca is violating the fundamental rules of mathematical science which he, as an avowed actuary, promised to uphold. Mr. Maresca is content in

> "leaving future beneficiaries to rely on future contributions in precisely the same way and in the same proportion as the Joint Fund relies on these future contributions today".

However, Mr. Maresca is overlooking the decision of Judge Ward who mandated a division of the Joint Pension Fund and Joint Welfare Fund on the basis of a plan "which will equitably divide the funds".

Mr. Maresca further concludes that "a shift in either direction would render one or the other Fund incapable of ever meeting their present obligations". Well, Local 15 has been carrying Local 14 these many years by reason of the greater revenues derived from its better than 4 to 1 advantage in membership. Mr. Maresca would like to see Local 15 carry this burden right up and including the separation to the unjust division he seeks. The use of Section 10 cannot be allowed to remain in the order if an equitable division is to be obtained.

WHEREFORE, it is respectfully prayed that reference to Section 10 of the Pension Plan in the Order of Judge Ward dated May 21, 1975 as the method to be used in dividing or separating the Funds, be eliminated and that in place thereof

that the Special Master respectfully recommend to the Court that the Joint Welfare Fund a nd Joint Pension Fund be divided on a wholly equitable basis with no forfeiture to any of the participants otherwise validly covered by these Funds.

William J. Corcoran

WILLIAM J. CORCORAN
CORCORAN AND BRADY
Attorneys for the Trustees of
the JOINT PENSION FUND, LOCALS
14, 14B, 15, 15A, 15C, 15D,
AFL-CIO, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO
11 Park Place
New York, N. Y. 10007

Sworn to before me this

13th day of October 1975

Robert D. Brady

Notary Public

ROBERT D. BRADY
Notary Public, State of New York
No. 60-5419397
Qualified in Westchester County
Commission Expires March 30, 1976

REPLY AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION

COPIES TO:

HON. WILLIAM J. MOORE, SPECIAL MASTER
FORDHAM LAW SCHOOL
140 West 62nd Street
New York, N. Y. 10023

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Foley Square
New York,NY 10007

PENSION BENEFIT GUARANTEE CORP.
P.O. Box 7119
Washington, D.C. 20044

DORAN,COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attys. for Local Unions 14, 14B, AFL-CIO and
Thomas J. Nolan, as Trustee of the Joint Pension
Fund, International Union of Operating Engrs.
1461 Franklin Avenue
Garden City, NY 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attys. for Trustee Robke
330 Madison Avenue
New York, N.Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attys. for Trustee Gerosa
800 Third Avenue
New York, NY10022

ROBERT D. BRADY, ESQ.
Atty. for Local 15, IUOE and
THOMAS A. MAGUIRE as Trustee
of the Joint Pension Fund
11 Park Place
New York, NY 10007

REPLY AFFIDAVIT OF WILLIAM J. CORCORAN IN SUPPORT OF MOTION

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

Beatrice V. Miller being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides at New York City.

On October 13, 1975 Deponent served the with Reply Affidavit of William J. Corcoran upon the following at the addresses designated for that purpose by depositing a true copy of the same enclosed in a post paid properly addressed wrapper, in a post office - official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York:

Clerk, U.S.District Court
Southern District of New York
Foley Square, NY, NY 10007

Robert D. Brady, Esq.
11 Park Place
New York, NY 10007

Hon. William J. Moore, Special Master
140 West 62nd St.
New York, NY 10023
Fordham University School of Law

Pension Benefit Guarantee Corp.
P.O. Box 7119
Washington, D. C. 20044

Doran, Colleran, O'Hara, Pollio & Dunne, P.C.
1461 Franklin Avenue
Garden City, NY 11530

Shea, Gould, Climenko & Kramer, Esqs.
330 Madison Ave., NY, NY 10017

Cunningham & Kaming, Esqs.
800 Third Ave.
New York, NY 10022

Beatrice V. Miller

Sworn to before me this
13th day of October 1975

Robert D. Brady

AFFIDAVIT OF SOL TABOR IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	Index No. 74 Civ. 2887 (R.J.W.) AFFIDAVIT IN SUPPORT OF MOTION TO DELETE SECION 10 FROM THE ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SOL TABOR, being duly sworn, deposes and says:

1. I am the Vice President and Regional Manager of Tolley International Corporation, Consulting Actuaries to the Trustees of the Joint Welfare and Joint Pension Funds, International Union of Operating Engineers, Local Unions 14, 14B, 15, 15A, 15C, 15D, AFL-CIO.

2. I make this affidavit in support of the proposition that the inclusion of the procedures set forth in Section 10 of the Pension Plan will not conform to the Court's decision in appointing a "Special Master for the purpose of preparing a plan for submission for the Court which will equitably divide the Funds". Section 10 pertains to liquidation or termination

and its use will in no way make for an equitable division.

3. In answer to the affidavit of Mr. Charles Maresca that the credits of the participants have never been fully funded, nevertheless, they should receive or be credited with certain accrued benefits and a portion of the assets allocated for their protection and eventual payment of benefits.

Since there are unfunded liabilities, it stands to reason that any assets of the Fund should apply to the values accrued by all the participants rather than a select few such as the pensioners. It is understandable that where there is a termination and no future contributions are anticipated, then you might want to apply the assets to the pensioners and to those who are eligible to retire and have not done so. But, where you have a continuation of contributions even though into two separate Funds, it is not necessary to apply all the assets to one group such as the pensioners since it is anticipated that future contributions will be utilized toward the payment of pensions and to pay for unfunded liabilities of all the participants.

All the rights of the participants should be protected and not just a selected few. The emphasis under ERISA is to provide protection and afford benefits for persons who have met

certain minimal requirements regardless of age so that at some future date certain pension benefits will become payable to them.

4. It is my understanding that Martin E. Segal Company in making its computation used the year 1972 as its base. On October 9, 1975 the Actuaries representing the Employer Trustee O'Neill, Union Trustee Maguire and myself as Actuary for the Board of Trustees met with the Administrator of the Funds. Before the Meeting commenced, we were informed by representatives of the Martin E. Segal Company that upon advice of Mr. O'Hara's office, it declined to attend this meeting of the Actuaries.

5. After reviewing various tabulations, etc., the Actuaries present unanimously agreed that 1973 provides a better base year for making an actuarial evaluation of the Joint Pension Fund and each of the Locals. The 1973 census data base supplies much more complete information to conduct an actuarial evaluation and it was for this reason that 1973 was selected.

6. I join with the Petitioners in recommending to the Special Master the elimination of Section 10 of the Pension Plan as the method of procedure to be used in dividing the Fund.

AFFIDAVIT OF SOL TABOR IN SUPPORT OF MOTION

In my opinion, the use of Section 10 will not make for an equitable division.

Sol Tabor
SOL TABOR

Sworn to before me this

14th day of October 1975

William J. Corcoran
NOTARY PUBLIC

WILLIAM J. CORCORAN
Notary Public, State of New York
No. 31-5817065
Qualified In New York County
Commission Expires March 30, 1976

AFFIDAVIT OF SOL TABOR IN SUPPORT OF MOTION

COPIES TO:

HON. WILLIAM J. MOORE, SPECIAL MASTER
FORDHAM LAW SCHOOL
140 West 62nd Street
New York, New York 10023

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Foley Square
New York, N. Y. 10007

PENSION BENEFIT GUARANTEE CORP.
P.O. Box 7119
Washington, D.C. 20044

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attys. for Local Unions 14, 14B, AFL-CIO and
Thomas J. Nolan, as Trustee of the Joint Pension
Fund, International Union of Operating Engrs.
1461 Franklin Avenue
Garden City, New York 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attys. for Trustee Robke
330 Madison Avenue
New York, N.Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attys. for Trustee Gerosa
800 Third Avenue
New York, N.Y. 10022

ROBERT D. BRADY, ESQ.
Atty. for Local 15, IUOE and
THOMAS A. MAGUIRE as Trustee
of the Joint Pension Fund
11 Park Place
New York, N.Y. 10007

AFFIDAVIT OF SOL TABOR IN SUPPORT OF MOTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Beatrice V. Miller, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides at New York City.

On October 14, 1975 Deponent served the within Affidavit of Sol Tabor, Actuary, upon the following at the addresses designated for that purpose by depositing a true copy of the same enclosed in a post paid properly addressed wrapper, in a post office - official depository under the exclusive care and custody of the U. S. Postal Service within the State of New York:

Clerk, U.S. District Court
Southern District of New York
Foley Square, New York, NY 10007

Cunningham & Kaming, Esqs.
800 Third Avenue
New York, N.Y. 10022

Pension Benefit Guarantee Corp.
P.O. Box 7119
Washington, D.C. 20044

Robert D.Brady, Esq.
11 Park Place
New York, N.Y. 10007

Doran, Colleran, O'Hara,
Pollio & Dunne, P.C.
1461 Franklin Avenue
Garden City, NY 11530

Shea, Gould, Climenko & Kramer, Esqs.
330 Madison Ave.
New York, NY 10017

Beatrice V. Miller

Sworn to before me this
14th day of October 1975

Robert D. Brady

ROBERT D. BRADY
Notary Public, State of New York
No. 60-5419397
Qualified in Westchester County
Commission Expires March 30, 1976

AFFIDAVIT OF ROBERT D. BRADY IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	Docket No. 74 Civ. 2887 (R.J.W.) HON. WILLIAM J. MOORE, SPECIAL MASTER AFFIRMATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT D. BRADY, an Attorney admitted to practice in the Courts of New York State, affirms the foregoing statements are true, under the penalties of perjury.

1. I am the Attorney for LOCAL 15, International Union of Operating Engineers in the within proceeding and this affirmation is submitted in reply to the affidavit of RICHARD L. O'HARA, dated October 31, 1975 in opposition to the motion to modify the Order of this Court dated May 27, 1975. This affirmation is submitted for the specific purpose of pointing out a grossly and apparently intentional misleading statement contained in Mr. O'Hara's affidavit.

AFFIDAVIT OF ROBERT D. BRADY IN SUPPORT OF MOTION

2. In Paragraph 5 of his affidavit Mr. O'Hara alleges that Local 15 or its actuaries have arbitrarily changed the assumptions under which the Fund has been operating. In support of this allegation Mr. O'Hara advises that "A new set of rules was mailed to our office in the latter part of September". Mr. O'Hara's obvious purpose is to have the Court assume that the "new set of rules" originated from Local 15 or its actuaries. The truth of the matter is that the assumptions set forth on Exhibit A were drawn up and mailed to Mr. O'Hara and all other attorneys by Mr. Edwin Jones of Shea, Gould, Climenko, Kramer & Casey, Attorneys for Employer Trustee O'Neill. Mr. O'Hara knows this but does not so inform the Court.

3. Mr. O'Hara also knows that these assumptions came out of a meeting attended by Counsel, including Mr. Kennedy of his office, wherein an attempt was made to see if some acceptable method of division could be agreed upon in order to settle the differences then and now existing and thereby eliminate costly and time consuming motions and litigation. At this conference various methods and actuarial assumptions were utilized in this settlement attempt and at no time did any one party attempt to impose its position or actuarial method of division on any other party.

4. Mr. Jones' office then set down some proposed assumptions which would be used to calculate the present value of the Pension Fund to see if a division acceptable to all parties could be obtained.

As indicated in the first paragraph of Exhibit A it was agreed that calculations based on these assumptions were not to be prepared by Mr. Tabor until Mr. Kennedy checked with Local 14 Actuaries. As further indicated in the last paragraph of the Exhibit, all present, including Mr. Kennedy, agreed to the preparation of the memorandum.

5. It is particularly reprehensible that Mr. O'Hara now attempts to make unfair and deceptive use of a meeting entered into in good faith at which all parties dropped their adversary stances and attempted to cooperate fully in order to save the Fund additional expense.

6. Mr. O'Hara then labels as outrageous the intent of the within motion, alleging that the difference in methodology will produce a variance of 5%. Unstated is that 5% will result in a difference of approximately a quarter of a million dollars.

AFFIDAVIT OF ROBERT D. BRADY IN SUPPORT OF MOTION

WHEREFORE, it is respectfully requested that the Special Master recommend to the Court that Section 10 be deleted from the Order dated May 21, 1975.

Dated: New York, N. Y.
November 4, 1975

ROBERT D. BRADY

AFFIDAVIT OF ROBERT D. BRADY IN SUPPORT OF MOTION

TO:

HON. WILLIAM J. MOORE, SPECIAL MASTER
FORDHAM SCHOOL OF LAW
140 West 62nd Street
New York, N. Y. 10023

Clerk, United States District Court
Southern District of New York
Foley Square
New York, N.Y. 10007

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attorneys for Local Unions 14, 14B and
Thomas J. Nolan, as Trustee of the Joint
Pension Fund, International Union of
Operating Engineers
1461 Franklin Avenue
Garden City, N.Y. 11530

SHEA, GOULD CLIMENKO, KRAMER & CASEY, ESQS.
Attorneys for Trustee O'Neill
330 Madison Avenue
New York, N.Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attorneys for Trustee Gerosa
800 Third Avenue
New York, N.Y. 10022

PENSION BENEFIT GUARANTEE CORP.
P.O. Box 7119
Washington, D. C. 20044

CORCORAN AND BRADY, ESQS.
Attorneys for Board of Trustees
Locals 14-15, Joint Pension Fund
11 Park Place
New York, N.Y. 10007

AFFIDAVIT OF RICHARD L. O'HARA IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5).

Docket No. 74 Civ. 2887

AFFIDAVIT

- -X

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

RICHARD L. O'HARA, being duly sworn, says:

1. I am a member of the firm of Doran, Colleran, O'Hara, Pollio & Dunne, P.C., attorneys for Local 14 and Trustee Thomas J. Nolan. I submit this affidavit in response to Mr. Brady's affidavit, sworn to November 4, 1975. Additionally, I wish to comment on a letter with certain enclosures, prepared by Mr. Stergios of Shea, Gould, Climenko, Kramer & Casey, attorneys for Trustee O'Neill, which was not received by my office until November 5, 1975.

2. The meeting which Mr. Brady refers to was called at the behest of Mr. Jones of the Shea, Gould firm. Mr. Jones made certain proposals in an attempt to settle the differences between Locals 14 and 15. The method of division suggested at the

meeting was premised on proposed changes in actuarial assumptions. Local 14 rejected the proposal on grounds previously stated in its opposing papers. The present Joint Fund is based on certain assumptions, assumptions which were adopted by the Trustees and approved by the actuary to the Fund and such assumptions are not now subject to change. You cannot arbitrarily change these fixed assumptions to suit the whims of any party to this proceeding. This is why Local 14 rejected this settlement offer. If we can believe Mr. Tabor, of Tolley International Company, the actuaries for the Joint Funds, these proffered assumptions were adopted by Mr. Tabor and used in his calculations. The actuary for Local 15 presented no calculations. Where these proffered assumptions originated is irrelevant and their origination was not exactly the topic covered in my prior affidavit. What is relevant is the fact that they are artificial and constitute a total abrogation of the actuarial assumptions upon which the present Joint Fund is based. Moreover, I must take issue with the questionable practice of laying before this Court settlement offers which have heretofore been rejected.

2. Argument was had on this motion before the Special Master on October 15, 1975. At that time, the Special Master gave all the actuaries one week to submit calculations in support of their position that Section 10 is inequitable. Mr. Stergios' letter, with enclosures, arrived at my office on November 5, 1975. The report enclosed therewith and submitted by the actuary was

dated October 20, 1975. No explanation was given for the necessity of forwarding this report subsequent to Local 14's response to the actuarial reports submitted on October 22. Mr. Stergios' letter requests more time for Mr. Tabor to make calculations in accordance with all the methods suggested to date. Mr. Tabor, however, has directed his attention towards at least two of the methods suggested by A.S. Hansen, Inc., a "contribution method" and a "liability method", opting for the latter approach. A third approach suggested by A.S. Hansen, Inc., the second method listed on page 2 of Mr. Croot's letter to Trustee Robke of July 9, 1975, is a physical impossibility given the present state of the records for the Funds. Accordingly, I request that this application for more time be denied.

3. As for the report annexed to Hansen's letter to Trustee, O'Neill, this again merely shows that Local 14 is heavily burdened with accrued pension credits in exactly the proportions shown by the Laccetti letter of July 3, 1975.

Dated: Garden City, New York
November 7, 1975

/s/
RICHARD L. O'HARA

Sworn to before me this
7th day of November, 1975.

/s/

DORIS J. REESE
NOTARY PUBLIC, State of New York
No. 30-4502346
Qualified in Nassau County
Commission Expires March 30, 1977

AFFIDAVIT OF RICHARD L. O'HARA IN OPPOSITION TO MOTION

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

Lynda Arena, being duly sworn, says: deponent is not a party to the action, is over 18 years of age and resides at Farmingdale, New York.

On November 7, 1975 deponent served the within Affidavit upon the following at the addresses designated for that purpose by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Corcoran and Brady, Esqs.
11 Park Place
New York, New York 10007

Robert D. Brady, Esq.
11 Park Place
New York, New York 10007

Edward O. Adler, Esq.
Cunningham & Kaming, Esqs.
800 Third Avenue
New York, New York

. ster D. Stergios, Esq.
Shea, Gould, Climenko, Kramer
& Casey, Esqs.
330 Madison Avenue
New York, New York 10017

Pension Benefit Guarantee
Corporation
Box 7119
Washington, D.C. 20044
Attn: Mr. Wallace

/s/
Lynda Arena

Sworn to before me this
7th day of November, 1975.

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AFFIDAVIT OF RICHARD O'NEILL IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	Docket No. 74 Civ. 2887 (R.J.W.) HON. WILLIAM J. MOORE, SPECIAL MASTER AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD O'NEILL, being duly sworn, deposes and says:

1. I am an Employer Trustee on the Board of Trustees of the Joint Welfare and Joint Pension Funds, Locals 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, International Union of Operating Engineers ("Joint Funds") and fully familiar with the facts contained herein. I am making this Affidavit to clarify certain points raised in the Affidavit of Richard L. O'Hara, submitted on October 31, 1975.

2. In paragraph 5 of his Affidavit (page 4), Mr. O'Hara states that "a new set of rules" was sent to him, a copy of which

he attached as Exhibit "A" to his Affidavit. On September 19, 1975, a meeting was held at the office of Shea Gould Climenko Kramer & Casey, attended by representatives of the parties, in an attempt to explore an alternative method for the allocation of the assets of the Joint Funds. It should be emphasized that this was merely a proposal for purposes of exploring, once actual calculations were made, whether the results could be agreed upon by the parties as an acceptable method for the allocation. The fact that certain actuarial assumptions were suggested, which are different from, or additions to those in the Joint Funds, should not detract in any way from their validity. I am informed by my actuaries that the assumptions are realistic and sound.

3. In paragraph 8 of his Affidavit, Mr. O'Hara states that "the negotiations and the agreement concluded on Local 14's behalf were based in large part on the assumption that the amount of the corpus of the new Local 14 Pension Fund would consist of a portion of the assets of the old Joint Funds as divided by the Court pursuant to Section 10." To the best of my knowledge, at no time did the General Contractors Association of New York, Inc., a party to the negotiations, assume or agree that the Joint Funds were to be divided in accordance with Section 10.

AFFIDAVIT OF RICHARD O'NEILL IN OPPOSITION TO MOTION

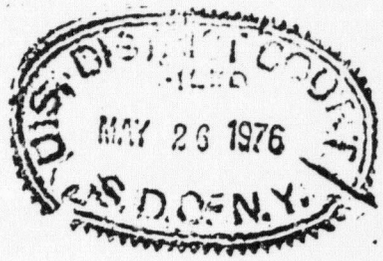
WHEREFORE, it is respectfully requested that the Special Master recommend to the Court that Section 10 be deleted from the Order dated May 21, 1975 so that all reasonable methods can be considered for the allocation of the assets of the Joint Funds, and for such other and further relief as to the Court may seem just.

RICHARD O'NEILL

Sworn to before me this
2nd day of December, 1975

NOTARY PUBLIC

ORDER BY WARD, D. J. APPEALED FROM.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5).

74 Civ. 2887
R.J.W.

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The Court adopts the Special Master's Recommendation dated May 21, 1976 and for the reasons set forth therein denies the motion to modify its Order dated May 21, 1975.

The Special Master is directed to continue the process of determining an equitable allocation of the Joint Fund following the procedures contained in Section 10 of the Joint Pension Plan.

It is so ordered.

Dated: May 25, 1976

Robert J. Ward
U. S. D. J.

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NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE PETITION OF THE TRUSTEES OF THE JOINT WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO AND THE TRUSTEES OF THE JOINT PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO FOR THE APPOINTMENT OF A SPECIAL MASTER PURSUANT TO TITLE 29, U.S.C., SECTION 186(c)(5)	:	NOTICE OF APPEAL 74 Civ. 2887 R.J.W.

----------X

NOTICE is hereby given that the Trustees of the JOINT PENSION FUND, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, AFL-CIO, other than Trustee THOMAS NOLAN, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of JUDGE ROBERT J. WARD, dated May 25, 1976 and entered in the Office of the Clerk of the United States District Court, Southern District of New York on May 26, 1976, wherein JUDGE ROBERT J. WARD adopts the Special Master's Recommendation dated May 21 1976 and for reasons set forth therein denies the motion to modify its Order dated May 21, 1976 and directs the Special Master to continue the process of determining an equitable allocation of the Joint Pension Fund, following the

NOTICE OF APPEAL

procedures contained in Section 10 of the Joint Pension Plan and the Trustees, other than Trustee THOMAS NOLAN, appeal from said Order dated May 25, 1976 and from each and every part thereof.

Dated: New York, New York
June 25, 1976

CORCORAN AND BRADY
Attorneys for the Trustees
of the Joint Pension Fund
Local Unions 14, 14B, 15, 15A,
15C, 15D, International Union
of Operating Engineers
11 Park Place
New York, New York 10007
Tel: (212) 227-2242

BY: William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

NOTICE OF APPEAL

TO:

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Foley Square
New York, N Y. 10007

HON. WILLIAM J. MOORE, SPECIAL MASTER
140 WEST 62nd Street
New York, N. Y. 10023

PENSION BENEFIT GUARANTEE CORP.
P.O. Box 7119
Washington, D. C. 20044

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.
Attorneys for Local Unions 14, 14B, AFL-CIO
and THOMAS J. NOLAN, as Trustee of the
Joint Pension Fund, International Union of
Operating Engineers
1461 Franklin Avenue
Garden City, New York, 11530

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Trustee RICHARD O'NEILL
330 Madison Avenue
New York, N. Y. 10017

CUNNINGHAM & KAMING, ESQS.
Attorneys for Trustee ALFRED GEROSA
800 Third Avenue
New York, N. Y. 10022

ROBERT D. BRADY, ESQ.
Attorney for LOCAL UNION 15
AFL-CIO and THOMAS P. MAGUIRE
as Trustee of the Joint Pension
Fund, International Union of Operating
Engineers
11 Park Place
New York, N. Y. 10007